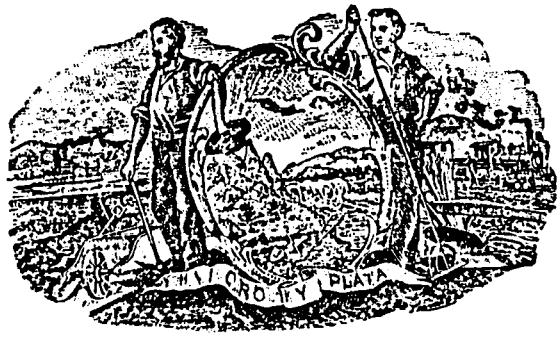
Laws and Resolutions

OF THE

STATE OF MONTANA



ENACTED BY THE

Forty-Eighth Legislature

In Regular

Session

Held at Helena, the Seat of Government

January 3, 1983 to April 20, 1983

Compiled by

MONTANA LEGISLATIVE COUNCIL

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OFFICERS AND MEMBERS
MONTANA
FORTY-EIGHTH
LEGISLATURE 1983
SENATE

Stan Stephens, President of the Senate
Allen, C. Kolstad, President Pro Tempore

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	PARTY
Aklestad, Gary C.	Box 32, Galata 59444	6	Toole	Republican
Berg, Harry K.	3309 17th Ave. So., Great Falls 59405	21	Cascade	Democrat
Blaylock, Chet	502 3rd Ave., Laurel 59044	35	Yellowstone	Democrat
Boylan, Paul F.	3747 So. 19th Rd., Bozeman 59715	38	Gallatin	Democrat
Brown, Bob	Route #2, Whitefish 59937	10	Flathead	Republican
Christiaens, B. F. Chris.	210 36th St. No., Great Falls 59401	19	Cascade	Democrat
Conover, Max	Box 46, Broadview 59015	36	Yellowstone	Democrat
Crippen, Bruce D.	3015 Gregory Drive, Billings 59102	33	Yellowstone	Republican
Daniels, M. K.	Box 670, Deer Lodge 59722	14	Powell	Democrat
Dover, Harold L.	712 7th Ave. No., Lewistown 59457	24	Fergus	Republican
Eck, Dorothy	10 W. Garfield, Bozeman 59715	39	Gallatin	Democrat
Elliott, Roger H.	Box R, Columbia Falls 59912	8	Flathead	Republican
Etchart, Mark	Box 229, Glasgow 59230	2	Valley	Republican
Fuller, David (Spike)	1030 Sierra Rd. West, Helena 59601	15	Lewis & Clark	Democrat
Gage, Delwyn	Box 1027, Cut Bank 59427	7	Glacier	Republican
Galt, Jack E.	Martinsdale 59053	23	Meagher	Republican
Goodover, Pat M.	803 Forest Ave, Great Falls 59404	22	Cascade	Republican
Graham, Carroll	Drawer K, Lodge Grass 59050	29	Big Horn	Democrat
Haffey, Jack	709 W. 4th St., Anaconda 59711	45	Deer Lodge	Democrat
Hager, Tom	150 Norris Court, Billings 59105	30	Yellowstone	Republican
Halligan, Mike	540½ So. 2nd West, Missoula 59801	48	Missoula	Democrat
Hammond, H. W. "Swede"	Box 1366, Malta 59538	3	Phillips	Republican
Hazelbaker, Frank. W.	Box 430, Dillon 59725	41	Beaverhead	Republican
Himsl, Matt	305 4th Ave. E., Kalispell 59901	9	Flathead	Republican
Jacobson, Judy H.	1400 W. Gold St., Butte 59701	42	Silver Bow	Democrat
Keating, Thomas F.	2003 Willowbrook Way, Billings 59102	32	Yellowstone	Republican
Kolstad, Allen C.	Box 648, Chester 59522	5	Liberty	Republican
Lane, Leo	Box 562, Three Forks 59752	40	Gallatin	Democrat
Lee, Gary P.	Box 6, Route 1, Fort Shaw 59443	17	Cascade	Republican
Lynch, John "J.D."	532 West Mercury, Butte 59701	44	Silver Bow	Democrat
Manning, Dave	Box 188, Hysham 59038	25	Treasure	Democrat
Manning, Richard E. "Dick"	810 7th Ave. No., Great Falls 59401	18	Cascade	Democrat
Marbut, A. Reed	8815 Pickerling Ln., Missoula 59802	49	Missoula	Republican
Mazurek, Joseph P.	516 Hayes, Helena 59601	16	Lewis & Clark	Democrat
McCallum, George	Niarada 59852	12	Sanders	Republican
Mohar, John	Star Route 1, Troy 59935	11	Lincoln	Democrat
Norman, Bill	440 Connell Ave., Missoula 59801	47	Missoula	Democrat
Ochsner, J. Donald	Broadus Route, Miles City 59301	26	Custer	Republican
Regan, Pat	204 Mountain View, Billings 59101	31	Yellowstone	Democrat
Severson, Elmer D.	Rt. 3, Box 480, Stevensville 59870	46	Ravalli	Republican
Shaw, James N.	Hodges Route, Wibaux 59353	28	Wibaux	Republican
Smith, Ed B.	Box 11, Dagmar 59219	1	Sheridan	Republican
Stephens, Stan	422 3rd Street, Havre 59501	4	Hill	Republican
Stimatz, Lawrence G.	1615 C Street, Butte 59701	43	Silver Bow	Democrat
Story, Pete	Box 355, Emigrant 59027	37	Park	Republican
Thomas, Bill	3440 12th Ave. So., Great Falls 59405	20	Cascade	Democrat
Towe, Thomas E.	2739 Gregory Dr. So., Billings 59102	34	Yellowstone	Democrat
Turnage, Jean A.	Box 450, Polson 59860	13	Lake	Republican
Tveit, Larry J.	Rt. 1, Box 117, Fairview 59221	27	Richland	Republican
Van Valkenburg, Fred	219 University, Missoula 59801	50	Missoula	Democrat

24 Democrats
26 Republicans
50 Representatives

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HOUSE OF REPRESENTATIVES

Daniel Kemmis, Speaker of the House
Joe Brand, Speaker Pro Tempore

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	PARTY
Abrams, Hubert J.	Wibaux 59353	56	Wibaux	Democrat
Addy, Kelly	237 Ave. C., Billings 59101	62	Yellowstone	Democrat
Asay, Tom	Rural Route 2, Forsyth 59327	50	Rosebud	Republican
Bachini, Robert F.	409 19th St., Havre 59501	7	Hill	Democrat
Bardanouve, Francis	Box 367, Harlem 59526	6	Blaine	Democrat
Bengtson, Esther G.	Shenherd 59079	59	Yellowstone	Democrat
Bergene, Toni R.	51[illegible]9th Ave. N.E., Great Falls 59404	36	Cascade	Republican
Bertelsen, Verner L.	Rural Route #1, Ovando 59854	27	Powell	Republican
Bliss, Brent	Rural Route #2, Dutton 59433	10	Chouteau	Republican
Brand, Joe	720 Montana Ave., Deer Lodge 59722	28	Powell	Democrat
Brown, Dave	3040 Ottawa, Butte 59701	83	Silver Bow	Democrat
Brown, Jan	906 Madison Ave., Helena 59601	32	Lewis & Clark	Democrat
Compton, Duane W.	Box 1061, Malta 59538	5	Phillips	Republican
Connelly, Mary Ellen	Box 214, Whitefish 59937	15	Flathead	Democrat
Curtiss, Aubyn A.	Box 216, Fortine 59918	20	Lincoln	Republican
Daily, Fred (Fritz)	1057 West Steel, Butte 59701	87	Silver Bow	Democrat
Darko, Paula A.	Box 490, Libby 59923	22	Lincoln	Democrat
Devlin, Gerry	Box 186, Terry 59349	52	Prairie	Republican
Donaldson, Gene	3890 Helberg Dr., Helena 59601	29	Lewis & Clark	Republican
Dozier, Robert H.	Box 1051, Billings 59103	61	Yellowstone	Democrat
Driscoll, Jerry L.	4344 Stone Street, Billings 59101	69	Yellowstone	Democrat
Ellerd, Robert A.	2206 Bridger Drive, Bozeman 59715	75	Gallatin	Republican
Ellison, Orval S.	West Boulder Route, McLeod 59052	73	Park	Republican
Ernst, Gene N.	Box 39, Stanford 59479	47	Judith Basin	Republican
Eudaily, Ralph S.	234 Kensington Ave., Missoula 59801	100	Missoula	Republican
Fabrega, W. Jay	2749 Carmel, Great Falls 59404	44	Cascade	Republican
Fagg, Harrison G.	1414 Mystic Drive, Billings 59102	63	Yellowstone	Republican
Farris, Carol	311 28th St. So., Great Falls 59401	41	Cascade	Democrat
Hammond, Joe	Box 12, Alberton 59820	24	Mineral	Democrat
Hand, Bill	30 South Arizona St., Dillon 59725	82	Beaverhead	Democrat
Hannah, Tom	2228 Beloit, Billings 59102	67	Yellowstone	Republican
Hansen, Stella Jean	841 Woodford St., Missoula 59801	96	Missoula	Democrat
Hanson, Marian W.	Box 237, Ashland 59003	57	Powder River	Republican
Harp, John G.	134 Park Ave., Kalispell 59901	19	Flathead	Republican
Harper, Hal	#9 Comstock Rd., Helena 59601	30	Lewis & Clark	Democrat
Harrington, Dan W.	1201 No. Excelsior, Butte 59701	88	Silver Bow	Democrat
Hart, Marjorie	Box 25, Glendive 59330	55	Dawson	Democrat
Hemstad, Andrea "Andy"	2401 4th Ave. No., Great Falls 59401	40	Cascade	Republican
Holliday, Gay	Box 316, Roundup 59072	46	Musselshell	Democrat
Howe, Ramona E.	Box 352, Lodge Grass 59050	58	Big Horn	Democrat
Iverson, Dennis	Box 66, Whitlash 59545	9	Liberty	Republican
Jacobsen, Glenn E.	Box 186, Plentywood 59254	1	Sheridan	Democrat
Jensen, James D. "Jim"	128 Alderson, Billings 59101	66	Yellowstone	Democrat
Jensen, William (Ray)	Rt. 1, Box 75, St. Ignatius 59865	25	Lake	Republican
Jones, Tom L.	171 3 Mile Dr., Kalispell 59901	17	Flathead	Republican
Kadas, Mike	825 Cooley, Missoula 59802	95	Missoula	Democrat
Keenan, Nancy A.	1421 West Third, Anaconda 59711	89	Deer Lodge	Democrat
Kemmis, Daniel	Box 8687, Missoula 59807	94	Missoula	Democrat
Kennerly, Roland F.	Box 437, Babb 59411	14	Glacier	Democrat
Keyser, Kerry R.	Box 126, Ennis 59729	81	Madison	Republican
Kitselman, Les	1148 Patriot St., Billings 59105	60	Yellowstone	Republican
Koehnke, Francis	Box 692, Townsend 59644	45	Broadwater	Democrat
Lory, Earl C.	4795 Miller Creek Rd., Missoula 59803	99	Missoula	Republican
Lybeck, Ray	500 E. Reserve Dr., Kalispell 59901	16	Flathead	Democrat
McBride, Kathleen	3111 Carter St., Butte 59701	85	Silver Bow	Democrat
McCormick, Lloyd J. "Mac"	326 14th Ave. So. #2, Great Falls 59405	38	Cascade	Democrat
Marks, Robert L. "Bob"	302 Lump Gulch Rt., Clancy 59634	80	Jefferson	Republican
Manuel, Rex	Rural Route #1, Box 42, Fairfield 59436	11	Teton	Democrat
Menahan, William (Red)	1304 W. 5th St., Anaconda 59711	90	Deer Lodge	Democrat
Metcalf, Jerry	201 Vawter St., Helena 59601	31	Lewis & Clark	Democrat
Miller, Ron	513 52nd St. So., Great Falls 59405	42	Cascade	Republican
Mueller, Glenn H.	Box 334, Libby 59923	21	Lincoln	Republican
Neuman, Ted	Box 87, Vaughn 59487	33	Cascade	Democrat
Nilson, Les	917 3rd Ave. So., Great Falls 59405	37	Cascade	Democrat
Nisbet, Gerald D.	420 25th Ave. N.E., Great Falls 59404	35	Cascade	Democrat
Nordtvedt, Ken	118 Sourdough Ridge, Bozeman 59715	77	Gallatin	Republican
O'Connell, Helen G.	703 4th Ave. S.W., Great Falls 59404	34	Cascade	Democrat
Pavlovich, Robert J. "Bob"	1375 Harrison Ave., Butte 59701	86	Silver Bow	Democrat
Peck, Ray L.	620 4th Ave., Havre 59501	8	Hill	Democrat
Phillips, John E.	1200 32nd St. So. #61, Great Falls 59405	43	Cascade	Republican
Pistoria, Paul G.	2421 Central Ave., Great Falls 59401	39	Cascade	Democrat
Quilici, Joe	3040 Kossuth, Butte 59701	84	Silver Bow	Democrat
Ramirez, Jack	4042 Pine Cove Rd., Billings 59106	64	Yellowstone	Republican
Ream, Bob	5950 Wildcat 24, Missoula 59802	93	Missoula	Democrat
Roush, Glenn A.	Box 195, Cut Bank 59427	13	Glacier	Democrat
Ryan, John A.	Box 8, Brusett 59318	49	Garfield	Republican
Sales, Walter R.	Route 1, Box 37, Manhattan 59741	79	Gallatin	Republican
Sands, Jack	3115 Poly Drive, Billings 59102	68	Yellowstone	Republican
Saunders, Glenn	Box 686, Columbus 59019	72	Stillwater	Democrat

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Schultz, James M. "Jim"	1210 7th Ave. No., Lewistown 59457	48	Fergus	Republican
Schye, Ted	North Star Route, Glasgow 59230	4	Valley	Democrat
Seifert, Carl A.	Route 1, Box 45B, Polson 59860	26	Lake	Republican
Shontz, John M.	Rural Route #2, Box 2400, Sidney 59270	53	Richland	Democrat
Smith, Clyde B.	148 Three Mile Dr., Kalispell 59901	18	Flathead	Republican
Solberg, Chester	Box 848, Scobey 59263	2	Daniels	Republican
Spaeth, Gary	Silesia 59080	71	Carbon	Democrat
Stobie, Chris H.	Route 2, Box 44, Thompson Falls 59873	23	Sanders	Republican
Swift, Bernie	S.E. 206 Rose Lane, Hamilton 59840	91	Ravalli	Republican
Switzer, L. Dean	Star Route #2, Richey 59259	54	Dawson	Republican
Thoft, Bob	Route 3, Box 1520, Stevensville 59870	92	Ravalli	Republican
Underdal, Melvin	Box 605, Shelby 59474	12	Toole	Republican
Veleber, Dennis L.	3035 Eaton, Missoula 59801	98	Missoula	Democrat
Vincent, John	1217 South Grand, Bozeman 59715	78	Gallatin	Democrat
Vinger, Orren C.	517 Johnson, Wolf Point 59201	3	Roosevelt	Republican
Waldron, Steve	Box 5233, Missoula 59806	97	Missoula	Democrat
Wallin, Norm	2422 Springcreek Dr., Bozeman 59715	76	Gallatin	Republican
Williams, J. Melvin "Mel"	Box 245, Laurel 59044	70	Yellowstone	Democrat
Winslow, Cal	1240 Crawford Dr., Billings 59102	65	Yellowstone	Republican
Yardley, Dan	Box 482, Livingston 59047	74	Park	Democrat
Zabrocki, Carl J.	Route 2, Box 3166, Miles City 59301	51	Custer	Democrat

55 Democrats
45 Republicans
100 Representatives

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277		489	Bardanouve	An act to generally revise language in existing code sections to conform to the treasury fund structure terminology as established by Chapter 28, Laws of 1981, as required by Chapter 28, section 5, Laws of 1981; instructing the Code Commissioner to make the changes; and providing an effective date.....Page 522
278		492	Dozier	An act to provide that all trailers licensed for a gross weight of 18,000 pounds or less are class eight property for the purpose of taxation and that all trailers licensed for a gross weight exceeding 18,000 pounds are class ten property; amending sections 15-6-138 through 15-6-140, MCA; and providing an effective date.....Page 523
279		501	Farris	An act to amend sections 49-2-303 and 49-3-103, MCA, to allow an exception to the prohibition against employment discrimination on the basis of marital status in certain circumstances.....Page 525
280		514	Spaeth	An act prohibiting a public employee from accruing annual leave or sick leave during any period of leave without pay; amending sections 2-18-611 and 2-18-618, MCA.....Page 526
281		530	Bardanouve	An act to generally revise language in various code provisions in order that references to the treasury fund structure conform to Chapter 28, Laws of 1981, as required by Chapter 28, section 5, Laws of 1981; amending sections 2-17-105, 2-18-402, 15-35-108, 15-38-106, 15-38-201, 15-38-202, 16-11-119, 16-11-206, 17-2-102, 17-2-105, 17-6-201, 17-6-203, 17-8-101, 17-8-105, 18-2-103, 20-9-601, 20-10-201, 20-10-203, 20-25-225, 20-26-1105, 39-51-401, 39-51-402, 39-51-404, 39-51-406, 39-51-407, 53-1-302, 53-9-109, 60-11-1207, 67-11-304, 70-9-309, 72-14-210, 72-14-403, 76-4-105, 76-13-114, 76-13-503, 77-1-602, 77-6-203, 80-2-103, 80-2-222, 80-2-228, 80-2-232, 80-6-1109, 80-11-207, 81-1-104, 87-1-601, 87-1-602, and 90-6-202, MCA; instructing the Code Commissioner to make the necessary changes; and providing an effective date.....Page 528

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282		541	Bardanouve	An act to generally revise language in code sections dealing with the retirement systems in order that references to the treasury fund structure conform to Chapter 28, Laws of 1981, as required by Chapter 28, section 5, Laws of 1981; amending sections 19-1-202, 19-3-104, 19-4-501, 19-5-101, 19-5-202, 19-6-101, 19-6-203, 19-6-401, 19-7-101, 19-7-202, 19-8-101, 19-8-203, 19-8-401, 19-8-405, 19-9-104, 19-9-203, 19-9-501, 19-9-706, 19-12-102, 19-12-407, 19-13-104, 19-13-204, and 19-13-501, MCA; instructing the Code Commissioner to make the necessary changes; and providing an effective date. ..... Page 553
283		532	Bardanouve	An act to generally revise language in code sections dealing with the Workers' Compensation Division in order that references to the treasury fund structure conform to Chapter 28, Laws of 1981, as required by Chapter 28, section 5, Laws of 1981; amending sections 39-71-206, 39-71-1004, 39-71-2303, 39-71-2304, and 39-71-2321 through 39-71-2327, MCA; instructing the Code Commissioner to make the necessary changes; and providing an effective date. ..... Page 566
284		547	Hand	An act providing that the registration of an elector is complete upon receipt by the election administrator of a properly completed registration card; amending section 13-2-114, MCA. ..... Page 570
285		554	Howe	An act to transfer functions regarding maternity leave from the Commissioner of Labor and Industry to the Commission for Human Rights; amending section 39-7-203, MCA; repealing sections 39-7-201, 39-7-202, and 39-7-205 through 39-7-209, MCA; and providing an effective date. ..... Page 571
286		626	Bardanouve	An act revising the excess unfunded liability provisions of the Municipal Police Officers' Retirement Act and the Firefighters' Unified Retirement Act; amending sections 19-9-107, 19-9-503, and 19-13-503, MCA; and providing an immediate effective date. ..... Page 572
287		639	Waldron	An act to transfer from the Department of Administration to the Department of Commerce the functions of generally assisting political subdivisions, exercising oversight of financial and reporting systems, supervising records retention, and performing audits; and providing an effective date. ..... Page 574
288		655	Harp	An act to exclude line trucks and bucket trucks from the laws regulating hoisting engines; amending section 50-76-101, MCA; and providing an immediate effective date. ..... Page 575
289		674	McBride	An act requiring that workers' compensation benefits received by a member of the firefighters' unified retirement system be included as part of the member's monthly compensation received during a disability period for the purposes of determining contributions and service credits under the retirement system; and providing an immediate effective date. ..... Page 576
290		688	Sales	An act establishing procedures for transferring service credits between the Public Employees' Retirement System and the Teachers' Retirement System; amending section 19-3-509, MCA; repealing section 19-3-507, MCA; and providing an effective date. ..... Page 576
291		741	Addy	An act to provide that the training services of the county attorney training coordinator may be made available to city attorneys and that the training coordinator may charge a fee for the training; amending section 44-4-103, MCA. ..... Page 579
292	7		Aklestad	An act permitting a defendant sentenced to death to be confined at the state prison at state expense pending execution; amending section 46-19-103, MCA; and providing an immediate effective date. ..... Page 580
293	26		Mazurek	An act to alter certain judicial district boundaries and to change the number of judges in certain judicial districts; providing for the election of new judges; amending sections 3-5-101 and 3-5-102, MCA; and providing effective dates. ..... Page 581
294	173		Crippen	An act to raise the maximum permissive mill levy for county museums; amending section 7-16-2205, MCA. ..... Page 582
295	325		Christiaens	An act to include funds invested in certificates of deposit in Montana financial institutions in the definition of "Montana securities" for purposes of computing the premium tax on insurers; amending section 33-2-705, MCA. ..... Page 583

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297		94	Ellison	An act to authorize the Department of Fish, Wildlife, and Parks to issue permits for the taking and holding of raptors for captive breeding projects; amending sections 87-5-204 and 87-5-206, MCA. ....Page 586
298		533	Bardanouve	An act to generally revise language in code sections dealing with the issuance of bonds in order that references to the treasury fund structure conform to Chapter 28, Laws of 1981, as required by Chapter 28, section 5, Laws of 1981; amending sections 17-5-401, 17-5-403 through 17-5-408, 17-5-411, 17-5-412, 17-5-421, 17-5-422, 17-5-503, 17-5-506, 17-5-507, 17-5-608, 17-5-618, 17-5-702 through 17-5-705, 17-5-708 through 17-5-710, 20-25-433, 20-25-434, 60-3-201, 60-11-1107, 76-15-507, 85-1-102, 85-1-304, 85-1-307, 85-1-321 through 85-1-323, 85-1-603 through 85-1-606, 85-1-613 through 85-1-615, 85-1-617, 85-1-619, 85-1-620, 85-1-623, 90-2-102, 90-2-112, and 90-2-121 through 90-2-127, MCA; instructing the Code Commissioner to make necessary changes; and providing an effective date....Page 588
299		560	Abrams	An act to revise and clarify the duties of motor vehicle operators and law enforcement officers concerning the filing of accident reports; to provide a penalty for failure to file a report; amending sections 61-7-109 and 61-7-111, MCA; and providing an immediate effective date....Page 614
300		638	Hansen	An act providing that the Insurance Commissioner may impose an administrative penalty upon an insurer for failing to pay medical or health claims in a timely manner; providing that the commissioner may inquire into the cause of certain late payments; providing that insurers shall pay the insured interest on certain claims that are not paid in a timely manner; defining "proof of loss" and "insurer". ....Page 615
301		764	Nilson	An act to allow the possession and transportation of eagle parts and plumage for religious purposes by members of Indian tribes when such possession or transportation is permitted by federal law; amending section 87-5-201, MCA. ....Page 617
302	150		Story	An act to provide that for privately owned public swimming pools no lifeguard is required if warning is given; amending section 50-53-107, MCA....Page 617
303	185		Galt	An act to revise taxation exemptions for certain coal producers; amending sections 15-6-208 and 15-35-103, MCA; providing an immediate effective date and an applicability date....Page 618
304	210		Dover	An act authorizing the Unemployment Insurance Division to use a portion of contributions from employers for certain administrative purposes; and providing an effective date. ....Page 619
305	279		Ochsner	An act amending section 85-5-107, MCA, to revise the reporting requirements for and costs assessable by a water commissioner. ....Page 620
306	330		Galt	An act revising the law relating to special license plates for members of the National Guard; amending section 10-1-110, MCA.....Page 620
307	345		Stephens	An act to allow the Department of Administration to provide assistance to political subdivisions or nonprofit organizations for the purpose of establishing communication systems; amending section 2-17-302, MCA....Page 621
308	354		Christiaens	An act revising the laws relating to priority of agisters' liens and liens of service over perfected security interests and other recorded liens; amending section 71-3-1202, MCA....Page 622
309	382		Stimatz	An act limiting the amount a health service corporation may charge for a policy converted from a group plan; requiring 45 days' notice of any rate increase by a health service corporation; amending section 33-30-1007, MCA....Page 623

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311	435		Fuller	An act revising the provisions of the Public Employees' Retirement System Act permitting a member to receive retirement benefits for an absence due to illness or injury; permitting certain members who are eligible for service retirement to apply for a disability retirement; amending sections 19-3-504 and 19-3-1002, MCA; and providing an effective date. ....Page 625
312		196	Peck	An act authorizing the Board of Public Education to adopt policies for programs to serve gifted and talented children; amending sections 20-2-121, 20-7-903, and 20-7-904, MCA; and providing an effective date....Page 627
313		425	J. Jensen	An act to provide that the Fish and Game Commission may authorize the director of the Department of Fish, Wildlife, and Parks to open or close special seasons upon 12 hours' notice; amending section 87-1-304, MCA....Page 629
314		480	Addy	An act to generally revise the law relating to the required retention of bank records; amending section 32-1-491, MCA; and providing an effective date. ....Page 630
315		519	Peck	An act clarifying the procedures for granting contingency financing or emergency budgets for allowable costs of special education; amending section 20-9-321, MCA....Page 630
316		617	Underdal	An act to increase the coverage of crop dusting and spraying liens; amending section 71-3-901, MCA....Page 632
317		807	R. Jensen	An act to change the filing time for a crop lien for seed or grain furnished or funds advanced to purchase the same from 30 days to 90 days after the seed or grain is furnished or the funds are advanced; amending section 71-3-703, MCA....Page 632
318		857	Abrams	An act authorizing mutual aid agreements among law enforcement agencies of this and other states and the United States; specifying authority of law enforcement officers and agencies; clarifying the effect of agreements on legal duties of law enforcement agencies; providing for approval and filing of agreements; authorizing agency commitment of funds, personnel, and equipment for purposes of agreements; and providing an immediate effective date. ....Page 633
319	2		Aklestad	An act prohibiting, except under certain circumstances, appellate review of alleged errors not objected to during a criminal trial; amending sections 46-20-104 and 46-20-702, MCA....Page 636
320	125		Blaylock	An act to delete the word "credit" from the name of development credit corporations of Montana; to change the loan limit restrictions for such corporations; to lower the interest rate on such corporations' evidences of indebtedness; and to lower the required earned surplus of such corporations; amending sections 32-4-101, 32-4-201, 32-4-302, and 32-4-304, MCA; and providing an immediate effective date. ....Page 637
321	137		Himsl	An act revising the sunset provisions concerning state agencies; eliminating the 6-year limitation on reestablishing agencies or programs; establishing a procedure for specifying agencies and programs to be reviewed; amending sections 2-8-101, 2-8-102, 2-8-111 through 2-8-113, 2-8-121, and 2-8-122, MCA; repealing sections 2-8-103 and 2-8-104, MCA; and providing effective dates....Page 641
322	184		Mazurek	An act to generally revise the applicability of the Securities Act of Montana; and to provide a fee for the transfer of a salesman's registration; amending sections 30-10-102 through 30-10-105, 30-10-107, and 30-10-209, MCA....Page 645
323	204		Keating	An act to exempt the right of entry from property taxation; amending sections 15-6-131, 15-6-201, and 15-8-111, MCA; providing an immediate effective date and an applicability date....Page 654
324	208		Jacobson	An act defining a hospice for licensing purposes; requiring the Department of Health and Environmental Sciences to adopt rules setting standards for licensing a hospice; amending section 50-5-101, MCA....Page 657

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326	264		Graham	An act to allow the Department of Revenue to impute a value on coal whenever the operator of a mine subjects the coal to processing that improves its quality; amending section 15-35-107, MCA. ....Page 662
327	269		Halligan	An act authorizing the Public Service Commission to order refunds and credits of public utility charges unlawfully collected and allowing interest on such refunds; amending sections 69-3-305 and 69-3-330, MCA....Page 663
328	278		Conover	An act amending section 85-7-1904, MCA, to increase from $125,000 to $150,000 the amount of a purchase or rental to which an irrigation district board may bind a district without consent of the landowners. ....Page 664
329	293		Hager	An act to generally revise and clarify the laws relating to certificates of need for health care facilities; amending sections 50-5-101, 50-5-301, 50-5-302, 50-5-304 through 50-5-306, and 50-5-308, MCA; and providing an immediate effective date and delayed effective dates....Page 665
330	294		Hazelbaker	An act revising the statutes governing the manner in which taxes and assessments are made against irrigation district lands; removing the $5 minimum fee for lands not able to receive water; providing for assessments under contracts with the state; and providing for assessment of construction costs for gravity systems; amending sections 85-7-2103 and 85-7-2104, MCA....Page 677
331	314		Stimatz	An act providing for the qualification of public service retirement credits among the Public Employees', Highway Patrolmen's, Sheriffs', Game Wardens', Municipal Police Officers', and Firefighters' Unified Retirement Systems for public service performed for the state and the political subdivisions of the state; amending sections 19-3-509, 19-6-305, 19-7-309, 19-8-306, and 19-9-405, MCA; and providing an effective date. ....Page 679
332	319		Stephens	An act clarifying the cost-of-living increase for chief probation officers and providing an annual longevity allowance for all probation officers; amending sections 41-5-704 and 41-5-705, MCA; and providing an effective date. ....Page 684
333	336		Daniels	An a ' revising the aerial hunting laws; including a prohibition on harass.aent of livestock; providing for increased penalties for illegal hunting of wild animals; amending sections 81-7-501, 81-7-503, 81-7-505, and 81-7-511, MCA....Page 686
334	388		Blaylock	An act to amend the complaint and initial investigation provisions of the laws relating to misconduct by judicial officers; providing for notice; amending section 3-1-1106, MCA....Page 687
335	392		Elliott	An act to generally revise and clarify the licensing laws for certified public accountants and licensed public accountants; to broaden the Board of Accountants mandatory rulemaking authority; to allow the board to require accounting experience as a prerequisite to receiving a permit; granting the board authority to assess investigative costs; providing for exceptions to privileged communications; and providing a penalty; amending sections 37-50-102, 37-50-201, 37-50-203, 37-50-301 through 37-50-303, 37-50-305, 37-50-308, 37-50-311, 37-50-312, 37-50-314, 37-50-316, 37-50-321, 37-50-322, 37-50-333 through 37-50-335, 37-50-342, and 37-50-402, MCA. ....Page 688
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341		420	Dozier	An act to generally revise and clarify the laws relating to tourist campgrounds and trailer courts; to exclude from regulation platted and filed trailer courts served by public water supply and sewage disposal systems; to provide for the regulation of work camps and youth camps; amending sections 50-52-101 through 50-52-103, 50-52-105, and 50-52-301, MCA....Page 704
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374		602	Kitselman	An act authorizing county water and county sewer districts to regulate utilities that they own; providing that such a district is subject to the same procedures and limits as a municipality regulating a municipally owned utility; amending section 7-13-2301, MCA. .....Page 786
375		603	Peck	An act to allow the number of hours worked by firefighters to be the subject of collective bargaining; amending sections 7-1-111, 7-33-4109, 39-3-406, and 39-4-107, MCA; and repealing sections 7-33-4126, 7-33-4129, and 7-33-4132, MCA; and providing an immediate effective date.....Page 787
376		618	Keyser	An act amending the Montana Medical Malpractice Panel Act by changing the name of the act; clarifying the definitions used in the act; providing for a different allocation of assessments; changing the time within which affidavits of disqualification may be filed; providing for service by certified mail; increasing the number of proposed panelists initially selected; deleting the prohibition against the use of impeaching evidence in court; amending sections 27-6-101, 27-6-103, 27-6-104, 27-6-206, 27-6-305, 27-6-402, 27-6-404, and 27-6-704, MCA; and providing effective dates.....Page 791

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377		706	Asay	An act excluding certain royalties from the definition of contract sales price of coal; amending section 15-35-102, MCA; and providing an effective date.....Page 794
378	68		Gage	An act providing an income tax deduction to nonresidents for contributions made to Montana or a political subdivision; amending section 15-30-131, MCA; and providing an effective date and an applicability date.....Page 795
379	194		Aklestad	An act to generally amend and clarify the laws relating to jury selection; eliminating the requirement for ballot capsules; specifying the duties of the Clerk of the District Court; and amending exemptions from jury service; amending sections 3-5-510, 3-5-511, 3-15-204, 3-15-312, 3-15-313, 3-15-501, 3-15-502, 3-15-505, 3-15-507, 7-33-2314, 7-33-2315, 25-7-202 through 25-7-204, 25-7-206, 25-7-208, 25-7-209, and 46-17-202, MCA.....Page 796
380	244		Towe	An act requiring a separate tax on certain lump-sum distribution payments; and providing an immediate effective date and an applicability date.....Page 801
381	281		Eck	An act allowing adoption of a local option motor fuel tax by referendum; amending section 7-14-301, MCA.....Page 802
382	295		Marbut	An act to clarify that interest earned on the deposit of county and municipal improvement district funds and interest earned on the investment of bond and warrant proceeds of such districts are credited to the district's fund; amending sections 7-12-2173, 7-12-2175, 7-12-4205, and 7-12-4207, MCA; and providing an effective date.....Page 803
383	413		Gage	An act allowing only 70 percent of the windfall profits taxes withheld and paid by an operator to be deducted in computing net proceeds taxes on oil and gas; providing a method to adjust the deductible percentage upon request; providing limitations; amending sections 15-23-603 and 15-23-605, MCA; and providing a retroactive applicability date.....Page 804
384		105	Winslow	An act to allocate to the postsecondary vocational-technical centers and adult basic education programs that portion of interest earnings now being reinvested in the local impact and education trust fund; amending section 90-6-211, MCA; and providing an effective date.....Page 806
385		213	Dozier	An act requiring the seller of a condominium unit to notify prospective buyers of the existence of a controlling interest in the condominium project and of that control over the association bylaws and regulations; requiring the seller of any condominium unit or his agent to furnish a buyer with copies of the condominium bylaws, regulations, and governing law; allowing a prospective purchaser a period to withdraw without penalty; amending section 70-23-606, MCA.....Page 807
386		306	Ernst	An act to allow certain local government entities to restrict audit report publication to a statement concerning availability; amending section 2-7-521, MCA.....Page 808
387		371	Kemmis	An act permitting the Board of Investments to prudently invest in Montana business activities up to 10 percent of any fund; amending section 17-6-211, MCA.....Page 808
388		608	Spaeth	An act repealing sections 37-61-304 through 37-61-306, MCA, which establish procedures for disciplining attorneys that are inconsistent with orders and rules of the Supreme Court; and providing an immediate effective date.....Page 811
389		609	Spaeth	An act to direct the Department of Justice and local law enforcement agencies to establish a central repository for dental records of missing persons and unidentified dead bodies.....Page 811
390		633	Donaldson	An act to require the Department of Commerce to establish the renewal dates for certain professional and occupational licenses by rule; amending sections 37-1-101, 37-9-304, 37-9-305, 37-10-307, 37-14-310, 37-30-307, 37-30-423, 37-67-315, and 37-69-307, MCA; and providing an effective date.....Page 813

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391		634	Compton	An act amending section 7-8-2513, MCA, to clarify that a lease of a mineral interest by the Board of County Commissioners is not required to first be appraised; providing an immediate effective date and a retroactive applicability date. ....Page 817
392		678	Kitselman	An act to provide an additional sentence for an offense committed while carrying a handgun loaded with armor-piercing ammunition; amending section 46-18-222, MCA....Page 817
393		684	Ramirez	An act to increase the minimum penalties for sale of dangerous drugs, thus remedying an omission made during the 46th Legislature; amending section 45-9-101, MCA....Page 818
394		698	Stobie	An act making the Highway Patrol primarily responsible for and revising rules for safety inspections of trucks based in Montana; amending section 44-1-1005, MCA....Page 819
395		710	Kitselman	An act to generally revise the laws relating to nonresident insurance agents and policies written through such agents; providing for reciprocal requirements for countersignature of resident insurance agents on policies of insurance written through nonresident agents; requiring the filing of an annual business report; imposing certain Montana taxes; and providing penalties for violations; amending sections 33-17-404, 33-17-1001, 33-17-1004, and 33-17-1111, MCA....Page 820
396		731	Ramirez	An act to adopt 1978 revisions to the Uniform Federal Lien Registration Law; amending sections 71-3-201 and 71-3-203 through 71-3-206, MCA....Page 823
397		732	Harper	An act to repeal provisions on optional forms of county government in order to eliminate confusion and duplication with other laws relating to alternative forms of local government applicable to counties; repealing sections 7-3-2101 through 7-3-2117 and 7-3-2131 through 7-3-2134, MCA....Page 825
398		789	Abrams	An act providing that the Department of Revenue's designee instead of its agent is the party defendant in certain proceedings; amending section 15-8-115, MCA....Page 825
399		257	Ramirez	An act to adopt the American Bar Association's model act on professional corporations and repeal the laws regulating corporations that render professional services; repealing sections 35-4-101 through 35-4-107, 35-4-201 through 35-4-204, and 35-4-211 through 35-4-216, MCA....Page 826
400		534	J. Jensen	An act to provide that the prohibition against licensing undertakers as life or disability insurance agents applies only to undertakers operating in this state; amending section 33-17-203, MCA....Page 834
401		811	Yardley	An act to require guardians and conservators for wards and protected persons to file an annual accounting; amending sections 72-5-321 and 72-5-438, MCA....Page 834
402	138		Mazurek	An act to generally revise Montana's codification of the Uniform Commercial Code by substantially adopting the 1972 and 1977 changes recommended by the Uniform Law Commissioners; amending sections 30-1-105, 30-1-201, 30-2-107, 30-2-207, 30-2-702, 30-4-208, 30-5-114, 30-5-116, 30-8-102 through 30-8-107, 30-8-201 through 30-8-208, 30-8-301 through 30-8-320, 30-8-401 through 30-8-406, 30-9-102 through 30-9-106, 30-9-203 through 30-9-205, 30-9-301, 30-9-302, 30-9-304 through 30-9-306, 30-9-308, 30-9-309, 30-9-312, 30-9-313, 30-9-318, 30-9-401 through 30-9-407, 30-9-501, 30-9-502, 30-9-504, and 30-9-505, MCA; and repealing section 30-9-408, MCA. ....Page 837
403	266		Marbut	An act revising the Uniform Anatomical Gift Act by broadening the definition of "bank or storage facilities"; removing liability for persons acting in good faith under the act; and establishing qualifications for persons performing eye enucleation services under the act; amending sections 72-17-102 and 72-17-202, MCA....Page 901
404		121	Veleber	An act providing that for purposes of an election for changing the form of local government, an election conducted in November 3 years earlier is considered to be 3 years prior to a general election date; amending section 7-3-155, MCA....Page 903
405		176	Fabrega	An act to revise the law relating to the staff of the Board of Public Education; amending section 20-2-122, MCA. ....Page 904

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Chap. Num.	Senate Bill	House Bill	Sponsor	Title
406		360	Hart	An act to clarify and properly designate the Department of Institutions as administrator of both the alcohol and drug programs in the state by defining and using the term "chemical dependency" where appropriate; amending sections 53-24-101, 53-24-103, 53-24-104, 53-24-204, 53-24-206, 53-24-207, 53-24-209 through 53-24-211, and 53-24-306, MCA.....Page 904
407	224		Tveit	An act to designate the grizzly bear, Ursus arctos horribilis, as the official animal of the state of Montana.....Page 909
408	114		Thomas	An act to ensure that property found with or upon a decedent and any suicide note will be given to decedent's personal representative, family, or other person entitled thereto, except when the property or note is considered by the County Attorney to be evidence of a crime; repealing section 44-3-402, MCA.....Page 910
409	120		Boylan	An act to revise the provisions relating to the leasing of power equipment by Class A, B, C, and D carriers by deleting the requirement for specific approval and certification by the Public Service Commission; amending section 69-12-611, MCA; and providing an effective date.....Page 910
410	126		E. Smith	An act allowing a person who owns real property for the primary pursuit of bona fide agricultural interests to provide outfitting services for consideration on that property without a license; amending section 87-4-101, MCA.....Page 911
411	394		B. Brown	An act allowing a defendant sentenced to death to choose between hanging and a lethal injection; providing that the warden of the state prison shall provide the place, person, and implements to carry out the execution; changing the list of persons viewing the execution; exempting persons actually performing the execution from professional licensing requirements; amending sections 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, and 46-19-204, MCA; providing for application to death sentences imposed before and after the effective date of this act; and providing an immediate effective date.....Page 912
412		9	Waldron	An act authorizing the Montana Highway Commission to designate sufficiency levels for apportionment of construction funds to the federal-aid primary system; authorizing the Department of Highways to allocate funds accordingly; amending section 60-3-205, MCA; and providing an immediate effective date.....Page 916
413	95		McCallum	An act revising the allocation of federal forest reserve money to school districts; amending sections 17-3-213, 20-9-331, 20-9-332, and 20-9-335, MCA; and providing an effective date.....Page 917
414	318		Graham	An act to amend the proportional vehicle registration law; to change the definition of the term "preceding year"; to revise the application requirements; and to change the procedure for the withdrawal of fleet vehicles; amending sections 61-3-712, 61-3-721, and 61-3-725, MCA.....Page 920
415		415	Daily	An act to allow a Municipal Court Judge and his law partners to practice law before any court of this state except the municipal court of that judge; amending sections 3-1-601, 3-1-603 and 3-1-604, MCA.....Page 923
416		495	Hannah	An act providing a term of 4 years for appointed city judges; amending section 3-11-201, MCA.....Page 923
417		636	Peck	An act requiring the pilot of an aircraft to file a flight plan on certain long-distance VFR flights originating at a Montana public airport; providing rulemaking authority to the Department of Commerce.....Page 924
418	94		Regan	An act to revise the permissive amount and the permissive levy allowed school districts; and to increase the basic county levies in support of local and state equalization of the foundation programs of the elementary and high school districts; amending sections 20-9-331, 20-9-333, and 20-9-352, MCA; and providing an effective date.....Page 924
419	287		B. Brown	An act amending section 22-3-107, MCA, to assign the Montana Historical Society the duty of publishing a roadside history of Montana.....Page 927

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420		836	o. Jensen	An act to define the mourning dove as a migratory game bird; restricting the open hunting season; amending section 87-2-101, MCA. ....Page 929
421		151	Peck	An act to submit to the qualified electors of Montana an amendment to Article V, Section 14, of the Montana Constitution to provide that the congressional districts in Montana be redistricted within 90 days after the official final decennial census figures are available; and providing an effective date....Page 930
422		872	Sales	An act authorizing local governments to issue special and rural improvement district bonds without revolving fund backing; amending sections 7-12-2181 through 7-12-2183, 7-12-2185, 7-12-2186, 7-12-4221 through 7-12-4223, 7-12-4225, and 7-12-4227, MCA. ....Page 931
423	155		McCallum	An act vesting the owner of contiguous property with any interest abandoned by the state in property acquired for establishment of a highway....Page 936
424	161		Turnage	An act to establish a Flathead Basin Commission to coordinate monitoring of the quality and conditions of Flathead Lake and the natural resources within the Flathead Basin; and providing an effective date. ....Page 937
425	203		Towe	An act amending section 19-5-103, MCA, to require a judge or justice who retires voluntarily after 8 years of service to assist the Supreme Court, a District Court, or a Water Court upon request of the Supreme Court or the Chief Justice of the Supreme Court..Page 941
426	237		Halligan	An act to provide a procedure for restitution to victims of crimes by the criminal offenders and a procedure upon default in payment of restitution....Page 941
427	289		Norman	An act to establish qualifications for persons who represent themselves as dietitians or registered dietitians; to prohibit persons who do not meet the qualifications from representing themselves as such; to provide a penalty for violation; and providing a delayed effective date....Page 944
428		30	Lory	An act to delete the requirement that a school teacher or specialist must subscribe to an oath as a qualification for certification; to repeal the requirement that every professor, instructor, or teacher employed by any unit of the university system shall subscribe to an oath before entering employment; amending sections 20-4-104 and 20-4-201, MCA; and repealing section 20-25-106, MCA. ....Page 945
429		37	Schultz	An act to require that notices of proposed rulemaking under the Montana Administrative Procedure Act be mailed to organizations and members thereof which file a request with the Administrative Code Committee; amending section 2-4-302, MCA....Page 947
430		199	Addy	An act to generally revise the laws relating to military affairs and disaster and emergency services; amending sections 10-1-104, 10-1-302, 10-1-704, 10-3-103, 10-3-105, 10-3-107, 10-3-301, 10-3-311, 10-3-401, 10-3-404, 10-3-601, and 10-3-607, MCA; repealing section 10-1-504, MCA; and providing an effective date. ....Page 948
431		212	Fabrega	An act increasing the mill levy limit for libraries in counties from 3 mills to 5 mills and in municipalities from 4 ½ mills to 7 mills; and authorizing a governing body to exceed the maximum mill levy for library services upon approval by the voters; amending section 22-1-304, MCA; and providing an effective date. ....Page 953
432		245	Addy	An act to expand the geographical area that may be covered by contracts not to compete and to provide that when such contracts concern partnerships they may only be made upon dissolution of partnership; amending sections 28-2-704 and 28-2-705, MCA. ....Page 955
433		250	Vincent	An act to provide a mandatory term of imprisonment in the county jail upon a first conviction for driving under the influence of alcohol or drugs; providing for jail terms of consecutive hours; increasing the penalties for subsequent convictions; amending section 61-8-714, MCA....Page 955
434		267	Kitselman	An act increasing the allowable fee for transfer of equity incident to a retail sale; amending section 31-1-234, MCA; and providing an immediate effective date....Page 956

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435		363	Roush	An act to provide that in addition to emergency closings of banks as provided by law, banks may close during legal holidays in the State of Montana; amending section 32-1-481, MCA; and providing an immediate effective date.....Page 957
436		504	Zabrocki	An act to provide jobs to railroad employees affected by the consolidation or centralization of railroad stations and facilities; amending section 69-14-1001, MCA.....Page 957
437		522	Hand	An act amending section 13-10-503, MCA, to provide that all petitions for nomination by independent candidates or political parties not eligible to participate in a primary election must be submitted for signature verification at least 1 week before the filing deadline for the primary election.....Page 958
438		562	Harper	An act to amend the definition of the crime of incest to include any sexual contact; to extend the definition to include any stepson or stepdaughter who has not been adopted by the person committing the offense; providing for the defense of consent; amending section 45-5-613, MCA.....Page 959
439	20		Goodover	An act to remove the requirement that the Capitol press room be located on the third floor, adjacent to the Senate chambers; amending section 2-17-103, MCA; and providing an immediate effective date.....Page 959
440	21		Halligan	An act to authorize counties and municipalities to levy not more than 1 mill of property taxes to provide transportation services to senior citizens and handicapped persons; and providing an effective date.....Page 960
441	82		Lynch	An act authorizing special license plates for veterans with 100-percent service-connected disabilities for handicapped individuals and for former prisoners of war; and providing a delayed effective date.....Page 960
442	84		Hazelbaker	An act to provide that persons, firms, or corporations owning houses, buildings, derricks, or other structures shall pay 50 percent of the necessary and reasonable expenses, as determined by the Public Service Commission, of raising or cutting wires or removing poles to facilitate the movement of such structures unless the owners of the wires or poles refuse to raise, cut, or remove the same; requiring that an estimate of the cost be given; requiring owners of prefabricated structures to pay reasonable and necessary expenses of moving; amending sections 69-4-602 and 69-4-603, MCA.....Page 961
443	166		Eck	An act amending section 19-4-804, MCA, to increase the amount a retired member of the teachers' retirement system may earn without loss of retirement benefits; and providing an effective date..Page 963
444	259		Jacobson	An act reestablishing the Board of Livestock under existing statutory authority and rules; removing the Board of Livestock from periodic agency evaluation; establishing fees commensurate with costs; clarifying the time for transmitting livestock taxes; requiring designation of those inspectors and detectives considered law enforcement officers; authorizing the Department of Livestock to adopt rules and establish fees for handling estrays; revising compensation for the pork research and marketing committee; eliminating requirements concerning notification of sale of five or less head of livestock and bonds for operating a livestock market; eliminating the sale of five or less head of livestock as an exemption from brand inspection; amending sections 2-8-103, 15-24-925, 81-1-102, 81-1-201, 81-2-502, 81-3-107, 81-3-205, 81-3-210, 81-3-211, 81-3-214, 81-4-605, 81-5-202, 81-7-504, 81-8-256, 81-8-276, 81-8-304, 81-8-603, 81-9-113, 81-9-201, 81-9-301, 81-9-411, 81-20-201, 81-21-102, 81-22-102, 81-22-204, 81-22-205, and 81-22-208, MCA; repealing sections 81-3-216 and 81-8-257, MCA; and providing an immediate effective date.....Page 964
445	292		Goodover	An act to revise the law providing for protest of the issuance or transfer of a liquor license; amending section 16-4-207, MCA.....Page 978
446	320		Gage	An act increasing the maximum amount of a service or disability pension that may be paid to a volunteer firefighter by a fire department relief association; amending sections 19-11-602 and 19-11-604, MCA; and providing an effective date.....Page 979

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447	363		Mazurek	An act creating a tax deduction for corporations and shareholders of electing small business corporations making a donation of a computer or similar equipment to an elementary, secondary, or accredited postsecondary school; amending section 15-31-114, MCA; and providing an immediate effective date and an applicability date....Page 980
448	370		Eichart	An act to generally revise and clarify certain laws relating to surface and ground water; amending sections 85-2-112, 85-2-113, 85-2-123, 85-2-124, 85-2-236, 85-2-302, 85-2-303, 85-2-306 through 85-2-308, 85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, and 85-2-403, MCA; and providing an immediate effective date.....Page 984
449	371		Fuller	An act providing that when the circumstances of a child's custodial situation have changed and when it is in the child's best interest, a child custody decree may be modified if the child is 14 years of age or older and desires that it be modified; amending section 40-4-219, MCA.....Page 993
450	402		Mohar	An act defining a bicycle as a "vehicle"; revising and clarifying the bicycle traffic laws; amending sections 61-1-103, 61-1-123, 61-8-333, 61-8-336, 61-8-338, 61-8-354, 61-8-368, 61-8-504, 61-8-602, 61-8-604, and 61-8-605, MCA; and providing an immediate effective date.....Page 994
451		130	Stobie	An act to prevent the manufacture, sale, possession for sale, and advertisement of imitation dangerous drugs; authorizing the Board of Pharmacists to adopt rules; creating exemptions; and providing penalties; amending section 45-9-202, MCA.....Page 1000
452		166	Miller	An act to increase the limit on the amount that a school district can expend without going through the bid process; amending section 20-9-204, MCA.....Page 1002
453		169	Eudaily	An act clarifying and revising the definition of earned compensation for the teachers' retirement system; amending section 19-4-101, MCA; and providing an effective date.....Page 1003
454		182	Winslow	An act to generally revise and clarify the licensing law for physical therapists; amending sections 37-11-307 and 37-11-310, MCA; and providing an effective date.....Page 1005
455		219	Hannah	An act amending sections 30-13-202 and 30-13-205, MCA, relating to when registration of an assumed business name is prohibited; and providing an effective date.....Page 1006
456		229	Ramirez	An act to generally revise and clarify the laws relating to business and nonprofit corporations; amending sections 35-1-213, 35-1-301, 35-1-303, 35-1-1006, 35-1-1020, 35-2-301, 35-2-805, and 35-2-819, MCA.....Page 1007
457		293	Dozier	An act increasing the allowable rate of return on warrants drawn on the special alley approach fund; and increasing the allowable duration of assessments for sidewalks, curbs, gutters, and alley approaches; amending sections 7-14-4109 and 7-14-4110, MCA; and providing an effective date.....Page 1012
458		303	Mueller	An act eliminating the provision allowing Montana National Guardsmen to participate in the public employees' retirement system; amending section 19-3-402, MCA; and providing an effective date.....Page 1014
459		391	Stobie	An act to require that if the Board of Land Commissioners adopts rules to establish the market value of cabin site licenses and leases, it adopt a method of valuation of current cabin site licenses and leases based upon an appraised license or lease value and a method of valuation of initial cabin site licenses or leases based upon a system of competitive bidding; and providing for the valuation, disposal, or purchase of fixtures and improvements.....Page 1014
460		457	Eudaily	An act to provide that the county and state equalization apportionment of a school district be reduced by 1/90th for each school day that the district fails to meet the requirement of 180 days of pupil instruction each school fiscal year; amending section 20-1-301, MCA.....Page 1016
461		461	Asay	An act to define the terms "deaf/blind", "multihandicapped", and "related services" as they relate to the laws governing special education of handicapped persons in Montana; amending section 20-7-401, MCA.....Page 1016

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462		539	C. Smith	An act allowing a logging truck of up to 80,000 pounds to operate under a special permit; amending section 61-10-124, MCA; and providing an immediate effective date.....Page 1019
463	280		Fuller	An act to amend section 85-7-1956, MCA, to allow an election to ratify authority for an irrigation district to contract with the United States.....Page 1020
464	415		Conover	An act to revise and clarify certain sections relating to agricultural seed; amending sections 80-5-101, 80-5-102, 80-5-104, 80-5-107, 80-5-112, and 80-5-201 through 80-5-204, MCA; and providing an immediate effective date.....Page 1020
465		24	Keyser	An act to generally revise the laws relating to youth; placing the authority for community-based residential services for youth under the Department of Social and Rehabilitation Services; amending sections 20-15-403, 41-3-104, 41-3-105, 41-3-405, 41-3-407, 41-3-501 through 41-3-504, 41-5-103, 41-5-306, 41-5-403, 41-5-523, 41-5-801, 41-5-802, 41-5-805, 53-2-201, 76-2-313, and 76-2-314, MCA; repealing sections 41-5-803 and 41-5-901 through 41-5-924, MCA; and providing an effective date.....Page 1029
466		35	Daily	An act to require a grant of rulemaking authority with each statute enacted or amended if it is to be implemented by an administrative rule; amending sections 2-4-305 and 5-4-402, MCA; and providing an applicability clause.....Page 1043
467		172	Williams	An act requiring County Clerks and Recorders to charge for each entry instead of for each index for documents requiring multiple indexing; clarifying that copies of birth or death certificates for which a $2 charge is imposed must be certified; raising the fee from $2 a page to $2.50 a page for documents recorded by mechanical means; amending sections 7-4-2631 and 7-4-2632, MCA.....Page 1045
468		231	Brand	An act to clarify the method for calculating the cost-of-living adjustment to a retirement allowance for a member of the firefighters' unified retirement system; to ensure payment of a retirement allowance to certain firefighters whose employment is involuntarily terminated; to provide an alternative method for calculating the cost-of-living adjustment for a retiree from a city no longer employing a newly confirmed full-paid firefighter; amending sections 19-13-1006 and 19-13-1007, MCA; and providing an effective date.....Page 1047
469		266	Connelly	An act to change the eligibility criteria for admission to the Montana Veterans' Home; eliminating conviction of a felony, conviction of a crime of moral turpitude, alcoholism, and nondisability as disqualifications; adding other qualifications; and authorizing the Department of Institutions to establish additional admission requirements; amending section 10-2-403, MCA.....Page 1049
470		277	C. Smith	An act making workers' compensation coverage mandatory for independent contractors who are not contracting for agricultural services to be performed on a farm or ranch or for broker or salesman services to be performed in a real estate business and providing for an optional exemption from coverage; requiring employers to post signs giving notice of employer's coverage and providing a fine; amending section 39-71-401, MCA.....Page 1050
471		321	Seifert	An act to prohibit health service corporation membership plans from disallowing payment to a dentist for care or services in areas where medicine and dentistry overlap if the dentist is licensed to perform such care or service.....Page 1051
472		336	Fabrega	An act to allow counties to issue revenue bonds in the manner provided in Title 7, chapter 7, part 44, for issuance of municipal revenue bonds; and to allow counties to refund revenue bonds in the manner provided in Title 7, chapter 7, part 45 or part 46, for refunding of municipal revenue bonds.....Page 1052
473		349	Spaeth	An act to generally revise and clarify the conservation district laws; to establish a conservation practice loan program; amending sections 76-15-301, 76-15-311, 76-15-313, 76-15-319, 76-15-501, 76-15-502, 76-15-512, 76-15-515 through 76-15-517, 76-15-523, 76-15-524, 76-15-527, and 76-15-804, MCA; and providing an immediate effective date.....Page 1052
474		441	Abrams	An act to authorize the Department of Highways to enter into bilateral agreements with an adjoining state or province for the collection of fees and taxes by either state or province.....Page 1058

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475		93	Donaldson	An act to allow an elementary school that anticipates an ANB of at least 14 but less than 18 pupils to apply for instructional aide funding and to receive an appropriate maximum general fund budget amount; amending sections 20-9-316 and 20-9-318, MCA; and providing an effective date. ....Page 1059
476		126	Kitselman	An act allowing counties to add a maximum of 3 percent of the principal to any bond or warrant issued to cover incidental or general fund expenses; amending section 7-12-2153, MCA. ....Page 1062
477		222	Peck	An act amending sections 5-1-101, 5-1-106, and 5-1-108 through 5-1-111, MCA, to provide statutory conformity to the constitutional amendment to accelerate Montana's congressional redistricting process; and providing a contingent effective date. ....Page 1062
478		224	R. Jensen	An act to allow school districts to use an accrual accounting system for budgeted funds; amending section 20-9-209, MCA....Page 1063
479		234	Yardley	An act to provide that the trustees of any school district when acting in their official capacity are individually immune from liability for exemplary and punitive damages; amending section 20-3-332, MCA. ....Page 1064
480		264	McBride	An act to renew the tax credit for installing alternative energy systems; amending section 15-32-201, MCA; and providing an applicability date. ....Page 1064
481		273	Peck	An act to allow the trustees of a school district to request the county election administrator to conduct a school election; amending section 20-20-401, MCA....Page 1066
482		331	Pistoria	An act to establish the offense of criminal possession of a toxic substance. ....Page 1067
483		364	Roush	An act to shorten the time period within which payment of time deposits may not be required; amending section 32-1-109, MCA; and providing an immediate effective date. ....Page 1067
484		375	McBride	An act to require the state to pay a claim within 30 days or when specified in a contract or agreement; and to provide for interest on the unpaid balance. ....Page 1068
485		390	Addy	An act to define unfair labor practices by health care facilities and labor organizations representing nurses; to establish procedures for adjudicating unfair labor practices charges; and to resolve appropriate unit and representation questions consistent with the public employees collective bargaining provisions; amending sections 39-32-102 through 39-32-106 and 39-32-109, MCA; and repealing sections 39-32-107, 39-32-108, and 39-32-111, MCA. ....Page 1069
486		427	Holliday	An act transferring the responsibility for control of state government data processing from the budget director to the director of the Department of Administration; further defining the department director's responsibilities; creating a data processing advisory council; amending sections 2-17-301 and 18-4-111, MCA; and providing an immediate effective date....Page 1072
487		437	Neuman	An act to revise the gross vehicle weight laws by allowing the maximum gross weight to be determined using the statutory formula, by eliminating the gross weight limitations on groups of axles, by providing for changing the 7 percent allowance to a 5 percent allowance on total gross and axle weight limitations for all vehicles or combinations of vehicles not transporting livestock, and by establishing maximum length for trailers and semitrailers in certain combinations and allowing maximum length of 75 feet for other combinations without special permit and 95 feet with special permit; correcting an erroneous reference; amending sections 61-10-104, 61-10-107, 61-10-124, and 61-10-144, MCA....Page 1073
488		466	Eudaily	An act limiting the definition of "travel trailer" for purposes of the fee in lieu of tax to trailers 45 feet or less in length and 8 feet or less in width and not used as a principal residence; amending sections 15-1-101 and 61-1-131, MCA....Page 1076
489		472	D. Brown	An act to generally revise hard-rock mining impact laws; amending sections 82-4-335, 90-6-305, 90-6-307, and 90-6-309, MCA....Page 1078

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490		490	Fabrega	An act generally revising the laws creating the State Board of Architects and relating to the licensure of architects by the state; granting the board the authority to adopt rules; amending sections 37-65-102, 37-65-202, 37-65-301 through 37-65-303, 37-65-305, 37-65-321, and 37-65-322, MCA.....Page 1084
491		506	Yardley	An act to add "repair" and "maintenance" to the definition of "construction"; to exempt repair and maintenance projects from the requirement that the Board of Examiners approve projects over $25,000 and the requirement that a private architect or consulting engineer be retained for such projects; amending sections 18-2-101, 18-2-103, 18-2-111, and 18-2-112, MCA; and providing an immediate effective date. .....Page 1087
492		507	Hannah	An act to amend the laws relating to the office hours and fees of Justices' Courts and to the commencement of actions in and removal of actions from Justices' Courts; amending sections 3-10-208, 25-31-112, 25-35-601, and 25-35-605, MCA.....Page 1089
493		528	Bengtson	An act to provide a weighted voting process in the selection of a person to fill a legislative vacancy in those legislative districts consisting of all or parts of more than one county; amending section 5-2-402, MCA.....Page 1091
494		541	Phillips	An act to generally revise the laws concerning the issuance and termination of fish and game licenses; amending sections 87-2-102, 87-2-104, 87-2-106, 87-2-111, and 87-2-202, MCA. .....Page 1092
495		567	Bertelsen	An act to prohibit destruction, disturbance, or removal of traps or removal of wildlife from traps belonging to another.....Page 1094
496		575	Lory	An act to provide a lien for medical practitioners and hospitals against payments awarded by the Workers' Compensation Division for medical services; amending sections 39-71-743, 71-3-1112, and 71-3-1118, MCA.....Page 1094
497		578	Miller	An act to give the Montana Insurance Department jurisdiction to determine jurisdiction over providers of health care benefits; to indicate how each provider of health care benefits may show under what jurisdiction it falls; to allow for examinations by the state if the provider of health care benefits is unable to show it is subject to another jurisdiction; to make such a provider subject to the Montana Insurance Code if it cannot show that it is subject to another jurisdiction; and to require disclosure to purchasers of such health care benefits concerning whether or not the plans are fully insured....Page 1095
498		592	Kitselman	An act to generally revise the Montana Insurance Code standard nonforfeiture law for life insurance; amending sections 33-20-202 through 33-20-204, 33-20-206, 33-20-207, 33-20-211, and 33-20-212, MCA. .....Page 1096
499		615	Holliday	An act authorizing the Department of State Lands to waive civil penalties for minor violations of the Montana Strip and Underground Mine Reclamation Act and requiring the Board of Land Commissioners to adopt rules to implement waiver of penalties; amending section 82-4-254, MCA; and providing an effective date. .....Page 1108
500		616	Holliday	An act providing that the obligation to make payments to royalty owners is of the essence in oil and gas leases; requiring oil and gas producers to pay interest on any unpaid royalties; requiring a royalty owner to bring any action seeking a remedy or to collect payments in the District Court of the county in which the well is located, and providing for court costs and attorney fees in any such action; amending section 82-10-102, MCA.....Page 1110
501		631	Schultz	An act allowing the head of a household to claim the same standard deduction as married individuals filing a joint return; amending section 15-30-122, MCA; and providing an applicability date....Page 1111
502		632	Bliss	An act requiring the county governing body to appoint a fire district trustee when there are no nominees for the position; amending section 7-33-2106, MCA. .....Page 1112
503		642	Yardley	An act authorizing under certain circumstances the possession and operation of certain antique slot machines; limiting their operation to private, residential dwellings; prohibiting their possession, location, and operation in any public premises but permitting their location for display and not for operation in a museum owned by the state, county, or city; prohibiting their operation for any commercial or charitable purpose; amending sections 23-5-104 and 23-5-121, MCA. .....Page 1113

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504		653	Sands	An act to clarify the provisions relating to high school tuition; amending sections 20-5-311 and 20-5-312, MCA; and providing an immediate effective date.....Page 1114
505		660	Hansen	An act to establish a procedure by which an individual alleging a violation of the Human Rights Act may elect to pursue a complaint before the commission or in District Court and by which a person against whom a complaint was filed may elect to have the matter removed to District Court; and providing an immediate effective date. .....Page 1117
506		691	Brand	An act to create a Board of Athletics responsible for protecting the public from fraud in boxing and wrestling events and for issuing licenses to promoters, referees, and others involved with those events; repealing section 7-21-4212, MCA; and providing an immediate effective date.....Page 1118
507		701	Fagg	An act to increase fees for the supervision and examination of banks; amending section 32-1-213, MCA; providing for rulemaking authority; and providing an effective date.....Page 1121
508		728	Shontz	An act relating to county control of littering and dogs; providing for county ordinance power to control littering and provide a penalty; and providing for a penalty for violation of a dog control ordinance; amending sections 7-23-104 and 7-23-2108, MCA.....Page 1122
509		786	D. Brown	An act requiring a state agency to maintain a central list of all contracts to be let by the agency; amending section 18-8-105, MCA. .....Page 1123
510		851	Jacobsen	An act declaring a temporary moratorium on the effective date of adoption or amendment of rules of the Department of Revenue governing the assessed valuation of agricultural lands.....Page 1124
511		855	Ramirez	An act to revise Montana's probate code with respect to renunciation of succession; to revise the alternate valuation for inheritance and estate taxes; to revise the statutes relating to deferred payment of inheritance and estate taxes; and to revise the apportionment of estate and inheritance taxes; amending sections 72-2-101, 72-16-331 through 72-16-335, 72-16-337 through 72-16-339, 72-16-341, 72-16-442, 72-16-452, 72-16-456, 72-16-463, 72-16-464, 72-16-491, and 72-16-603, MCA; and providing an applicability date.....Page 1125
512		887	Marks	An act clarifying which districts must be used to allocate voters to certify a ballot issue following a reapportionment; and providing an immediate effective date.....Page 1139
513		279	J. Hammond	An act allowing all public and private alcohol programs to be state-approved; denying eligibility for public funds to private alcoholism programs organized for profit; and eliminating the requirement for intermediate (halfway house) care before the provision of inpatient care; amending sections 53-24-103, 53-24-108, 53-24-206, and 53-24-209, MCA; and providing an immediate effective date. .....Page 1140
514		290	Seifert	An act allowing wholesale petroleum distributors to be included under the definition of "distributors" in the basic Gasoline License Tax Law; providing for an annual license fee; amending sections 15-70-201 and 15-70-202, MCA; and providing an effective date. .....Page 1144
515		419	Donaldson	An act to provide school transportation reimbursement rate schedules based on the number of eligible transportees that board a school bus on an approved route; amending section 20-10-141, MCA; and providing an effective date.....Page 1146
516		424	Shontz	An act allowing the Department of Social and Rehabilitation Services to operate a program of home and community-based medicaid services as an alternative to long-term institutional services; authorizing long-term care placement evaluations of persons seeking or receiving long-term care services; requiring the Department of Social and Rehabilitation Services to disseminate information about home and community-based medicaid services; and providing an effective date. .....Page 1147
517		449	Bardanouve	An act to clarify the time limit on interaccount loans; amending section 17-2-107, MCA; providing an effective date and an applicability date.....Page 1149

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518		465	Hemstad	An act to generally revise and clarify the laws relating to insurance; changing form filing requirements; clarifying provisions relating to reinsurance agreements and bulk reinsurance; providing that Inland Marine Insurance is taxed at 2 ¼ percent of net premiums written; defining and providing for the regulation of "public adjusters"; defining a "managing general agent" and providing for licensure; clarifying when insurance information may be obtained about an individual; clarifying the policy amount that must be offered on termination of a group life policy; and providing that a policy clause on conformity with state statutes be mandatory; amending sections 33-1-501, 33-2-119, 33-2-705, 33-2-1206, 33-17-102, 33-17-103, 33-17-201, 33-19-304, 33-20-1210, and 33-22-229, MCA. ....Page 1150
519		493	Yardley	An act to generally revise the laws governing procurement of supplies and services for state agencies; granting rulemaking authority to the Department of Administration; amending sections 18-4-104, 18-7-104, 18-7-105, and 87-1-209, MCA; and repealing sections 18-4-101, 18-4-102, 18-4-201 through 18-4-203, 18-4-211 through 18-4-214, 18-7-102, 18-7-103, and 18-7-111 through 18-7-113, MCA; and providing effective dates. ....Page 1158
520		572	Kitselman	An act to amend the Montana Insurance Code standard valuation law; amending sections 33-2-523 through 33-2-526, MCA.....Page 1175
521		591	Nisbet	An act to remove the age discrimination provision from the law governing tenure; amending sections 20-4-203 and 20-4-204, MCA. ....Page 1186
522		628	Harper	An act providing that a person involuntarily detained or examined or subject to an order for short-term treatment or long-term care and treatment under Title 53 chapter 21, MCA. must be given notice in writing of his right to appeal; providing for appeals to be filed within 90 days of service of notice; amending sections 53-21-114 and 53-21-131, MCA....Page 1187
523		702	Yardley	An act to clarify that the property of nonprofit organizations that own and operate facilities for the care of the developmentally disabled, mentally ill, and vocationally handicapped are exempt from property taxation; amending section 15-6-201, MCA; and providing an immediate effective date....Page 1188
524		705	Spaeth	An act providing that a judge elected or appointed to office on or after July 1, 1983, who retires involuntarily before age 65 cannot receive full state retirement benefits; increasing certain District Court fees; redistributing the percentage amount of court fees deposited in the county and state general funds; increasing certain members' contributions to the judges' retirement system; increasing the amount of court fees deposited in the retirement system; amending sections 19-5-402, 19-5-404, 19-5-503, and 25-1-201, MCA; and providing an effective date. ....Page 1189
525		794	Daily	An act to clarify the definition of "school bus" as defined in Title 20 and Title 61 by exempting certain motor vehicles from the definition; amending sections 20-10-101 and 61-1-116, MCA; providing an immediate effective date. ....Page 1192
526		812	Shontz	An act to provide that when it is required that legal notice be given to the owner of real property notice must also be given to a purchaser of the property under a contract for deed and any assignee or successor of such a purchaser; amending sections 7-2-4312, 7-3-1309, 7-3-4431, 7-3-4448, 7-13-2304, 7-14-4109, 7-15-4215, 7-22-2406, 7-22-2446, 15-7-102, 15-7-208, 15-15-101, 15-18-202, 15-23-102, 50-62-103, 69-4-317, 69-4-325, 69-4-353, 70-30-203, 76-3-605, 80-7-114, 80-7-206, 82-2-224, 82-4-222, 82-4-239, 82-10-503, 85-2-232, 85-2-307, and 85-15-202, MCA....Page 1193
527	378		Berg	An act reducing the number of years a member of the teachers' retirement system must serve before being eligible for retirement benefits, regardless of his age; increasing the employee and employer contribution rates; amending sections 19-4-602, 19-4-605, 19-4-801, and 19-4-802, MCA; and providing an effective date. ....Page 1213
528		582	Switzer	An act to provide additional deductions on the net proceeds of mines applicable to nonmetallic mines and mining claims; amending sections 15-23-502 and 15-23-503, MCA; and providing an applicability date....Page 1215

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530		357	Donaldson	An act to revise the laws relating to immunization and indemnification of governmental employees; amending section 2-9-305, MCA; and providing an effective date.....Page 1218
531		358	J. Brown	An act to prohibit discrimination on the basis of sex or marital status in the issuance or operation of insurance policies and retirement plans; and providing an effective date and an applicability clause. .....Page 1220
532		362	Sands	An act amending section 46-18-222, MCA, to provide that a voluntarily induced intoxicated or drugged condition may not be considered an impairment to a defendant's mental capacity for the purpose of providing an exception to mandatory sentences or restrictions on deferred imposition and suspended execution of sentences...Page 1221
533		370	Sands	An act to define a correctional policy for the State of Montana; amending section 46-18-101, MCA.....Page 1221
534		434	C. Smith	An act to allow a fish and wildlife licensing agent to post security other than a surety bond in accordance with department rules; and to require license agents to pay interest on license revenue that is remitted late; amending sections 87-2-902 and 87-2-903, MCA; and providing a delayed effective date. .....Page 1222
535		503	Miller	An act to provide for investment by banks of 50 percent of their unimpaired capital and surplus in bonds that are not general obligation bonds of the United States or a political subdivision of the State of Montana; amending section 32-1-433, MCA; and providing an immediate effective date.....Page 1223
536		548	Marks	An act to generally revise, expand, and clarify the law pertaining to budget amendments; deleting the criminal penalty relating to expenditures in excess of appropriations; amending sections 5-12-401, 5-12-402, 17-8-103, and 17-8-104, MCA; and providing an effective date.....Page 1224
537		576	Lory	An act creating a publicly owned golf course beer and wine license; and providing an immediate effective date. .....Page 1229
538		627	Dozier	An act to increase from 5 to 10 the number of members of the Public Service Commission personal staff that are exempt from certain provisions of the state employee classification and pay plan; amending section 2-18-104, MCA.....Page 1229
539		673	Iverson	The Agricultural Warehouse, Commodity Dealer, and Grain Standards Act; generally revising the statutes relating to the warehousing of and dealing in agricultural commodities; amending sections 80-5-201 through 80-5-203, MCA; repealing sections 80-3-501 through 80-3-513, 80-4-101 through 80-4-106, 80-4-111 through 80-4-126, 80-4-201 through 80-4-209, 80-4-221 through 80-4-234, and 80-4-311 through 80-4-313, MCA; and providing an effective date.....Page 1230
540		714	Spaeth	An act to establish procedures to be followed by the Human Rights Commission in the enforcement of the governmental code of fair practices and to provide for consistency of interpretation and enforcement of the governmental code of fair practices and the human rights laws; amending section 49-3-101, MCA; repealing section 49-3-303, MCA; and providing an immediate effective date.....Page 1258
541		730	Shontz	An act creating a 10-year highway reconstruction trust fund account; allocating portions of the coal severance, gasoline license, and special fuels taxes to the account; allocating to the account all funds received by the Department of Highways pursuant to section 17-3-201, MCA; directing the Department of Highways to develop a program for the reconstruction and preservation of highways based on need; changing the percentage allocation of coal severance tax proceeds; amending sections 15-35-108 and 17-3-201, MCA; and providing an effective date and a termination date.....Page 1261
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547		399	Vinger	An act authorizing boards of county commissioners to dispose of county property according to the best interest of the county; amending sections 7-8-2211, 7-8-2218, and 7-8-2220, MCA....Page 1273
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549		521	Vincent	An act requiring prior notification to persons appointed to serve on committees to prepare arguments for and against ballot issues; providing that no person may be required to serve on such a committee; amending sections 13-27-402 and 13-27-403, MCA....Page 1276
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551		565	Vinger	An act requiring a determination of legibility for the recording of documents by the County Clerk and Recorder and the addition of a statement by the clerk to documents considered not legible; amending section 7-4-2617, MCA....Page 1291
552		625	McBride	The Percent-For-Art Act; providing that an amount not to exceed 1 percent of state appropriations for building or renovating appropriate state buildings may be used for the acquisition of visual works of art for such buildings; and providing an effective date....Page 1292
553		662	Schye	An act to clarify the authority of irrigation districts to engage in electrical power operations; amending section 85-7-1961, MCA; and providing an immediate effective date....Page 1294
554		685	Harper	An act promoting the availability and investment of development capital in Montana through the creation of capital companies; providing tax credits for investment in the companies; providing oversight and auditing requirements; providing that offerings of the companies are exempt from securities registration; and providing an immediate effective date....Page 1295
555	69		Fuller	An act to increase the penalty and interest for late payments of unemployment contributions; and to provide a penalty for failure to file a report or return; amending section 39-51-1301, MCA; and providing an effective date....Page 1302
556	410		Halligan	An act to generally revise and clarify the laws relating to licensure of cesspool, septic tank, and privy cleaning businesses; allowing the Department of Health and Environmental Sciences to establish requirements by rule for disposal sites; providing for a hearing after the denial, suspension, or revocation of a license; providing for exceptions to the licensing requirement; providing for criminal penalties; amending sections 37-41-101, 37-41-103, 37-41-201, 37-41-202, 37-41-211, and 37-41-212, MCA; and repealing sections 37-41-102, 37-41-203, and 37-41-204, MCA....Page 1303

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575		746	Darko	An act changing methods of providing community college services outside of present districts by authorizing the creation of community college service regions upon application by the governing body of a county, municipality, or elementary or high school district; requiring a service plan and approval of the region electorate, the community college board of trustees, and the Board of Regents; allowing a property tax mill levy to fund regional community college services; providing that annexation to an existing community college district requires the territory to be annexed to be within a county contiguous to the district; allowing trustees discretion in calling an annexation election; amending sections 20-15-231 and 20-15-311, MCA; and providing an immediate effective date. ..... Page 1364
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579	217		Haffey	An act to transfer responsibility for preparation of the statewide cost allocation plan to the director of the Department of Administration from the budget director; amending section 17-3-110, MCA; and providing an immediate effective date. ..... Page 1372
580	316		Towe	An act to help farmers and ranchers obtain credit at lower interest rates for agricultural purposes; to create the Montana Agricultural Loan Authority; to provide an income tax deduction for certain land sales to beginning farmers; and to provide for legislative review. ..... Page 1372
581	391		Eck	An act to generally revise criminal penalties; increasing the dollar amount required to be involved in a crime before penalties for that crime are increased; increasing to 180 days the time period the court may order the defendant to be confined in jail as a condition of a deferred or suspended sentence; providing that as a condition of a deferred or suspended sentence, the court may order the defendant to pay the cost of such confinement; amending sections 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-316, 45-6-317, 45-6-325, 45-7-210, and 46-18-201, MCA. ..... Page 1380
582	441		Tveit	An act requiring oil and gas producers regularly paying royalties by check, draft, or order to provide the royalty owner with a record, accompanying every royalty payment, of certain matters pertaining to production and payment of royalties; providing a penalty and making that penalty applicable to corporations; amending sections 45-2-311 and 82-10-102, MCA. ..... Page 1386
583		106	Winslow	An act to impose a penalty on foreign corporations that transact business in this state without a certificate of authority; amending section 35-1-1004, MCA. ..... Page 1388

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584		574	Neuman	An act exempting certain armored motor vehicles from laws regulating motor carriers; amending section 69-12-102, MCA. .....Page 1389
585		712	Nilson	An act revising and clarifying the definition of monthly compensation for a part-paid firefighter employed by a second-class city for the purpose of calculating benefits under the Firefighters' Unified Retirement Act; amending section 19-13-104, MCA; and providing an immediate effective date. .....Page 1390
586	141		Gage	An act to provide for voting by absentee ballot at least 14 days prior to an election; amending section 13-13-222, MCA. .....Page 1392
587	232		Regan	An act to increase the minimum fee for issuance of a certified copy of a birth or death certificate by the Department of Health and Environmental Sciences or a search of vital statistics records by the department; providing that all fees be deposited in an earmarked revenue fund; amending section 50-15-111, MCA; and providing an effective date.....Page 1393
588	436		Blaylock	An act reestablishing the Public Service Commission under existing statutory authority and rules; revising Public Service Commission authority; providing for fees commensurate with costs; making temporary municipal regulatory authority over utilities permanent; exempting privately owned and county water and sewer systems from Public Service Commission regulation; authorizing temporary utility rate decreases; clarifying time limits on municipal rate increases; modifying municipal rate hearing notice requirements; extending special provisions relating to waste disposal to governments; amending section 9, Chapter 607, Laws of 1981; amending sections 2-8-103, 69-3-101, 69-3-204, 69-3-304, 69-7-101, 69-7-102, 69-7-111, 69-12-311 through 69-12-313, 69-12-321, 69-12-324, 69-12-406, 69-12-421, and 69-12-423, MCA; and providing effective dates. .....Page 1394
589		92	Stobie	An act to authorize the Administrative Code Committee to object to any rule upon the ground that it was adopted in substantial violation of the procedural or substantive authority delegated to the agency; requiring the agency, after objection by the committee, to prove the lawfulness of the rule; allowing costs and attorney fees against the agency if the rule is invalidated by court judgment; amending section 2-4-506, MCA.....Page 1404
590		119	Mueller	An act providing that the court, in a child support proceeding, may take into consideration the level of support received by children on public assistance; amending section 40-4-204, MCA.....Page 1405
591		670	Fagg	An act to increase the fees for licensing of weighing devices and to provide a late renewal fee; amending section 30-12-203, MCA; and providing a delayed effective date. .....Page 1406
592		682	Shontz	An act requiring the Department of Health and Environmental Sciences to establish a fee for an ambulance license of $35; amending section 50-6-307, MCA. .....Page 1407
593	107		Blaylock	An act to provide for basic levels of benefits under disability insurance policies and contracts for the care and treatment of mental illness, alcoholism, and drug addiction; amending sections 33-22-701 through 33-22-703 MCA. .....Page 1407
594	190		Himsl	An act to generally revise the reimbursement laws of the Department of Institutions; amending sections 53-1-401, 53-1-404, 53-1-405, 53-1-409, and 53-1-413, MCA.....Page 1410
595	298		Towe	An act revising the determination of distance limitations for the issuance of a liquor license; excepting licenses already issued; amending sections 16-1-106, 16-4-105, 16-4-201, and 16-4-501, MCA; and repealing sections 16-4-409 and 16-4-410, MCA.....Page 1412
596	443		E. Smith	An act to require that the executive budget reflect salary upgrades in the current funding level; amending sections 17-7-102 and 17-7-123, MCA.....Page 1418
597	446		Thomas	An act clarifying and further defining the services to be provided by personal-care facilities; establishing restrictions on eligibility for residency in such facilities; requiring that the Department of Health and Environmental Sciences establish by rule certain standards relating to resident admission and screening; providing for licensing of such facilities; providing for civil and criminal enforcement; clarifying the definition of "roominghouse" or "retirement home"; amending sections 50-5-101, 50-51-102, and 50-51-107, MCA. .....Page 1420

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598		205	Fabrega	An act revising the discretionary authority of the Highway Commission regarding projects for competitive bidding; clarifying the exception to competitive bidding; amending section 60-2-112, MCA. ....Page 1427
599		570	Williams	An act establishing goods and equipment intended for rent or lease as class eight property for purposes of taxation; providing an exception; amending sections 15-6-136, 15-6-159, and 15-6-202, MCA; and providing an immediate effective date. ....Page 1428
600		858	Hand	An act providing a graduated scale for the discount allowed for affixing tax insignia to cigarette packages; correcting a prior legislative oversight; amending sections 16-11-114 and 16-11-115, MCA. ....Page 1430
601	106		Blaylock	An act to increase the penalties for overweight vehicles; to revise the disposition of fines and forfeitures collected for violations of the vehicle size, weight, and load laws; and to provide for jurisdiction of such laws in justices' courts; amending sections 3-10-303, 61-10-145, and 61-10-148, MCA. ....Page 1431
602	313		Halligan	An act allowing an arresting officer to immediately seize the driver's license of any person driving upon ways of this state open to the public who refuses to submit to a chemical test; providing for suspension or revocation of the license by the Motor Vehicle Division; increasing the period of suspension; providing that an appeal of suspension may be filed in the District Court in the county in which the arrest was made as well as in the District Court in the county of the driver's residence; and reducing the time for notice of an appeal of suspension to the County Attorney; amending sections 61-8-402 and 61-8-403, MCA. ....Page 1433
603		629	D. Brown	An act to define the term "general election" for the purpose of submission to the people of laws or constitutional amendments by the Legislature; amending sections 13-1-101 and 13-1-104, MCA. ....Page 1434
604		899	Addy	An act amending the appointment qualifications of members of the Board of Personnel Appeals to remove potentially unconstitutional appointment qualifications; providing for a transition and appointments subject to the new appointment qualifications; amending section 2-15-1705, MCA; and providing an immediate effective date. ....Page 1438
605	247		B. Brown	An act to clarify that Railroad Retirement Act benefit payments received during claim periods beginning in 1981 or 1982 as a result of fulfillment of federal social security requirements are not to be included as income for the purpose of computing eligibility for the residential property tax credit for elderly; amending section 15-30-171, MCA; and providing an immediate effective date and an applicability date. ....Page 1439
606	342		Gage	An act to change the date for filing a report for gas or oil pipelines and gas or oil net proceeds for tax purposes from March 31 to April 15; amending sections 15-23-103, 15-23-104, and 15-23-602; and providing an immediate effective date and an applicability date. ....Page 1440
607		408	Driscoll	An act requiring that the last car of any freight train operating within the state be an occupied caboose; amending section 69-14-232, MCA. ....Page 1442
608		511	Bardanouve	An act to increase the cigarette sales tax in order to finance long-range building bonds; amending sections 16-11-111, 16-11-119 and 17-5-408, MCA; and providing an effective date. ....Page 1443
609	428		Eichart	An act authorizing establishment of county weather modification authorities with termination after 5 years; providing for a levy of up to 2 mills each year; and providing an immediate effective date. ....Page 1444
610	456		Fuller	An act to allow an electric or gas utility to purchase or invest in cost-effective energy conservation; to require the Public Service Commission to include conservation in a utility's rate base; to allow the Public Service Commission to allow a higher incremental rate of return on conservation; amending section 15-32-107, MCA. ..Page 1449

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612		150	Peck	An act to grant to Justices' Courts jurisdiction over first offenses of criminal possession of marijuana and to alter the penalty; amending sections 3-10-303 and 45-9-102, MCA; repealing section 45-9-201, MCA.....Page 1453
613		191	Ramirez	An act to provide that the division of property in a proceeding to terminate a marriage is considered to be a division of common ownership interests of the parties; amending section 40-4-202, MCA. .....Page 1454
614		232	Connelly	An act broadening privileges of special parking permitholders and allowing exemptions from time limits; allowing permits for temporarily handicapped persons; requiring special license plates or cards to bear the wheelchair emblem; providing for expiration of permit on recovery or death of permittee; authorizing special license plates for 100-percent disabled veterans; providing a penalty; amending sections 10-2-301, 49-4-301, 49-4-302, 49-4-304, and 49-4-305, MCA; and providing a delayed effective date.....Page 1456
615		319	Manuel	An act permitting a county governing body to organize county volunteer fire companies and enter into mutual aid agreements for fire protection; amending section 7-33-2202, MCA; and providing an effective date.....Page 1458
616		376	McBride	An act generally revising the law on grandparent visitation rights; amending section 40-9-102, MCA.....Page 1459
617		428	Ellison	An act to generally revise the procedures for changing high school district boundaries through annexation, consolidation, or transfer of territory of such districts; amending sections 20-6-304, 20-6-311, 20-6-402, and 20-6-403, MCA; repealing sections 20-6-302, 20-6-305, 20-6-306, and 20-6-310, MCA.....Page 1459
618		429	Hannah	An act to allow cities and towns to increase the penalty for discharging firearms within the limits of a city or town; amending section 45-8-343, MCA.....Page 1466
619		446	D. Brown	An act providing for the allocation of metalliferous mines license taxes to the general fund and to an impact trust account; restricting the uses of the impact trust account; providing for a small miner's exemption from the metalliferous mines license tax; amending sections 15-1-501, 15-37-101, 15-37-103, and 90-6-303 through 90-6-306, MCA; and providing a delayed effective date and an applicability date.....Page 1467
620		733	Bengtson	An act to provide for consolidated financing of local public expenditures by authorizing the Board of Investments to lend money to municipalities or other public bodies through the purchase of their securities by the Board; to authorize the Board to raise money for such loans by issuing its own bonds and notes payable out of loan repayments; and providing an immediate effective date.....Page 1471
621		743	Curtiss	An act to reduce the number of coniferous trees that a person may transport without a bill of sale and to require authorization of the owner for transportation of over 200 pounds of coniferous tree boughs; amending section 76-13-601, MCA.....Page 1482
622		825	Jacobsen	An act to generally revise the eminent domain laws; amending sections 70-30-104, 70-30-111, 70-30-201 through 70-30-203, 70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, and 70-30-313, MCA; repealing sections 70-30-204 and 70-30-205, MCA.....Page 148
623		880	Bergene	An act requiring reporting by health care professionals and other persons of incidents of abuse, neglect, and exploitation of older persons; specifying the use of the reports; providing for immunity from civil and criminal liability; specifying the duties of the Departments of Health and Environmental Sciences and Social and Rehabilitation Services relating to abuse, neglect, or exploitation of older persons; and providing penalties.....Page 1490

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624		16	Harp	An act making permanent the 1-cent motor fuels tax increment enacted in 1979; raising the motor fuels tax rates 6 cents per gallon effective July 1, 1983; increasing the allocation to counties, towns, and cities; amending sections 15-70-101, 15-70-204, and 15-70-321, MCA; and providing an effective date. ....Page 1493
625		58	Ryan	An act to restructure the mill levies for local government medical facilities; amending sections 7-34-2134, 7-34-2417, 53-2-321, and 53-2-322, MCA; and providing an effective date. ....Page 1496
626		112	Donaldson	An act to authorize increased emergency expenditures by the Governor; amending section 10-3-312, MCA; and providing an effective date....Page 1498
627		377	Fabrega	An act to provide funds for nongame wildlife programs in Montana; to provide for certain restrictions on the use of such funds; to provide for Fish and Game Commission approval of the use of such funds; amending section 87-5-102, MCA....Page 1499
628		405	Holliday	An act providing for statewide access to health information through a central information center operated by a private nonprofit corporation under contract with the Department of Health and Environmental Sciences; providing an appropriation for a central health information center; and providing an effective date. ....Page 1502
629		544	Peck	An act to increase the maximum general fund budget schedules for elementary schools and high schools; amending sections 20-9-316 through 20-9-319, MCA; and providing an immediate effective date. ....Page 1503
630		545	Manuel	An act to allow the Montana Wheat Research and Marketing Committee to authorize the Department of Agriculture to enter into insurance contracts to provide partial reimbursement to a grain producer who suffers a loss because of a grain dealer's bankruptcy or a grain dealer's wrongful disposition of grain delivered to him; amending sections 80-11-201 and 80-11-205, MCA; and providing an immediate effective date and a termination date. ....Page 1506
631		716	Metcalf	An act allowing the payment of fees in connection with the sale of county general obligation, municipal general obligation, and school district bonds; redefining the term "serial bonds" as it relates to such general obligation bonds; and allowing flexibility as to the first interest payment date on all such bonds; amending sections 7-7-2211, 7-7-2251, 7-7-2254, 7-7-4210, 7-7-4251, 7-7-4254, 20-9-408, 20-9-430, and 20-9-432, MCA....Page 1508
632		750	Dozier	An act to establish a new class of property for taxation purposes to include trailers and mobile homes, regardless of size, used as residences; to clarify when trailers and mobile homes may be taxed as personal property; to provide for initial assessment and taxation; and defining "leasehold improvements"; amending sections 15-1-101, 15-6-134, and 15-6-151, MCA....Page 1514
633		802	D. Brown	An act to generally revise the laws relating to the regulation of the sale and use of pesticides; amending sections 80-8-105, 80-8-109, 80-8-201, 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, and 80-8-306, MCA....Page 1517
634		841	Driscoll	An act to exempt certain tips from Montana income tax liability and withholding tax; amending sections 15-30-111 and 15-30-201, MCA; and providing a contingent termination date....Page 1527
635		870	Fabrega	An act to exempt certain taxable valuation of large-scale hard-rock mineral development from the usual property taxation by counties and school districts and to reallocate that taxable valuation for taxation by those municipalities, counties, and school districts to which the taxable valuation is allocated; to share the property tax base of large-scale hard-rock mineral developments; and providing an immediate effective date. ....Page 1530
636		923	Fagg	An act changing the criteria for transfer of an all-beverages liquor license to a new location and ownership outside its original quota area by increasing the percentage by which the number of such licenses in the new quota area may exceed that area's quota; amending section 16-4-204, MCA; and providing an immediate effective date....Page 1533

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638		153	Kitselman	An act authorizing the Department of Social and Rehabilitation Services to contract with a senior citizens' organization to establish a mock Legislature; appropriating money for the contract on a matching basis; and providing an effective date.....Page 1537
639		225	Asay	An act granting the Division of Workers' Compensation the authority to employ an adequate number of qualified coal mine inspectors and to prescribe their duties; amending section 50-73-401, MCA.....Page 1538
640		281	Dozier	An act to promote the general welfare in implementation of Article XII, section 2, of the Montana Constitution by allowing employees of municipal and county governments to agree to work more than 8 hours a day and to agree to a 7-day, 40-hour work period and by allowing employees of hospitals and similar establishments to agree to a 14-day, 80-hour work period; amending sections 39-3-406 and 39-4-107, MCA.....Page 1538
641		299	J. Brown	An act revising and clarifying the definition of long-term care facility; adding a definition of intermediate developmental disability care; amending section 50-5-101, MCA.....Page 1541
642		373	Marks	An act to reestablish the Board of Water Well Contractors; to delete specific fees and provide that the board establish fees; to decrease the time for license reapplication after the failure to pass an examination; to increase the bond requirement; to eliminate the requirement that a complainant must appear personally before the Board; to allow licensure based upon reciprocity; amending sections 2-8-103, 37-43-303, 37-43-305 through 37-43-307, and 37-43-311, MCA; and providing an immediate effective date.....Page 1545
643		558	Manuel	An act authorizing the issuance and sale of long-range building program bonds and refunding bonds; providing for an agreement between the Board of Examiners and the Department of Fish, Wildlife, and Parks; and providing an immediate effective date..Page 1551
644		637	Manuel	An act specifying that the Department of Revenue must use a certain method in valuation of agricultural land; amending section 15-7-201, MCA; and providing a delayed effective date.....Page 1552
645		663	Bengtson	An act to grant the Department of Social and Rehabilitation Services authority to administer the state plan on aging, to coordinate services to the aged, and to establish or redesignate planning and service areas; and providing an immediate effective date.....Page 1553
646		668	Brand	An act to increase the amount authorized for evening meal reimbursement for state employees and certain officials engaged in state business while away from their designated headquarters but within the state; amending section 2-18-501, MCA.....Page 1554
647		720	Lory	An act to provide for the negotiated sale of county, municipal, and school district general obligation refunding bonds and municipal revenue refunding bonds; to provide for the issuance of advance refunding general obligation bonds by counties, municipalities, and school districts; amending sections 7-7-2302, 7-7-4302, 7-7-4311, 7-7-4501, 7-7-4503, and 20-9-412, MCA; and providing an immediate effective date.....Page 1556
648		755	Yardley	An act providing a credit against individual partnership, small business corporation, or corporate income tax liability for capital expenditures for commercial systems that generate electricity by means of wind power; providing for limitation on and carryover of the credit; and providing an applicability date and an immediate effective date.....Page 1559
649		780	Harp	An act to establish schedules for the tax incentive for the production of alcohol to be blended for gasohol; to provide for licensing of and reporting by alcohol distributors; to rescind the suspension provision; amending sections 15-70-204 and 15-70-221, MCA; repealing section 3, chapter 576, Laws of 1979; and providing an effective date.....Page 1561

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650		785	D. Brown	An act to establish a planning framework for the development of a natural resource information system and to establish an ongoing Montana Natural Heritage Program; and providing an appropriation. ....Page 1565
651		798	McBride	An act to provide for the transfer of authority of the County Department of Public Welfare to the Department of Social and Rehabilitation Services at the option of the Board of County Commissioners; authorizing a workfare requirement for state and county general relief recipients; establishing a wage option for workfare recipients; amending sections 53-2-301, 53-2-302, 53-2-304, 53-2-306, 53-2-307, 53-2-322, 53-2-323, 53-3-301, and 53-3-304, MCA; providing an appropriation; and providing an immediate effective date. ....Page 1568
652		800	Vincent	An act creating a Youth Conservation Corps Program within the Department of Labor and Industry; providing that the program be administered by an executive director; defining the executive director's powers and duties; providing an appropriation for administering the program; and providing a termination date....Page 1576
653		815	Fabrega	An act requiring identification of and acquisition of railroad rights-of-way that may be abandoned; appropriating funds; and providing an immediate effective date....Page 1581
654		820	Asay	An act establishing an account to receive a portion of the proceeds of long-range building program bonds to provide loans for the sponsor's share of airport improvement projects; amending section 67-1-301, MCA; and providing an immediate effective date. ....Page 1582
655		846	Brand	An act expanding the prohibitions against political coercion of public employees and political activities of public employees while on the job; amending section 13-35-226, MCA. ....Page 1583
656		847	Driscoll	An act increasing salaries for elected state officials, Supreme Court Justices, District Judges, the Commissioner of Political Practices, and the chairman and members of the State Tax Appeal Board; amending sections 2-16-405, 3-5-211, 13-37-106, and 15-2-102, MCA; and providing an effective date. ....Page 1584
657		890	Hand	An act eliminating the proration of the new car sales tax for vehicles on the staggered registration system; clarifying the rulemaking authority of the Department of Revenue relating to vehicle taxes; amending sections 61-3-502 and 61-3-506, MCA. ....Page 1586
658		914	Asay	An act to provide for analysis of the potential for a joint water development project between Montana and Wyoming on the Clarks Fork of the Yellowstone River....Page 1588
659	260		Halligan	An act to extend the laws relating to the operation of a motor vehicle while under the influence of alcohol to roads and parking areas adapted for public travel and used by the public; amending sections 61-8-101 and 61-8-401 through 61-8-404, MCA. ....Page 1589
660	270		Regan	An act clarifying the authority of the Department of Health and Environmental Sciences to set fees for services performed by its laboratory; providing for deposit of the fees in an earmarked revenue fund; amending section 50-1-202, MCA; and providing an effective date....Page 1592
661	429		R. Manning	An act reducing the employer contribution rate to the Municipal Police Officers' Retirement System and the Firefighters' Unified Retirement System; increasing the state contribution to each retirement system by an amount equal to the reduction in the employer contribution rate; funding the cities' unfunded liabilities under both plans through insurance premium taxes; clarifying the prohibition against a firefighter participating in other retirement plans; amending sections 19-9-503, 19-9-702, 19-9-703, 19-13-302, 19-13-503, 19-13-604, and 19-13-605, MCA; and providing an effective date. ....Page 1593
662	439		Hager	An act to authorize counties, cities, and towns to enact ordinances defining areas where alcoholic beverages may or may not be sold that supplant the prohibition against the issuance of a retail alcoholic beverage license to a business located within 600 feet of a school or church; amending sections 16-3-306 and 16-3-309, MCA. ....Page 1596

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664		873	J. Brown	An act creating, within the Governor's office, an office of aging and requiring the Governor to appoint an advisory council on aging and a coordinator on aging; and providing an immediate effective date. .....Page 1598
665	40		Story	An act to generally revise the law relating to statements of economic impact of proposed administrative rulemaking; amending section 2-4-405, MCA.....Page 1599
666	235		Haffey	An act to clarify the information required to be submitted to the Budget Director and the Legislative Fiscal Analyst for the preparation of agency budget estimates; providing a date by which the budget office will prepare an agency request; and specifically including the university system under the budget requirements; amending sections 17-7-111 and 17-7-112, MCA.....Page 1601
667	414		Elliott	An act to couple Montana's definition of "small business corporation" to the federal definition for purposes of the corporate license tax; amending sections 15-31-201 and 15-31-202, MCA; repealing sections 15-31-205 through 15-31-207, MCA; and providing an immediate effective date and an applicability date.....Page 1603
668		114	Manuel	An act to provide training for family practice resident physicians; limiting use of funds; appropriating funds; and providing an effective date.....Page 1604
669	48		Towe	An act for the simplification of ballots; providing that local election administrators may request that only the ballot issue number, the fiscal statement, and the for and against statements appear on the ballot and that all other inform ation be distributed to electors as they enter the polling place; amending section 13-27-501, MCA...Page 1605
670	118		Towe	An act to require a public hearing prior to the sale or transfer of certain federal land.....Page 1606
671	159		Keating	An act to reduce the oil severance tax to 5 percent beginning April 1, 1985; amending section 15-36-101, MCA; and providing an immediate effective date and an applicability date. .....Page 1607
672	312		Himsl	An act increasing the per diem compensation for quasi-judicial, retirement, and licensing and regulatory boards from $25 a day to $50 a day; amending sections 2-15-124, 19-3-302, 19-4-202, 37-1-133, 85-7-1505, and 85-7-1613, MCA; and providing an effective date. .....Page 1609
673	335		Towe	An act to disallow deductions related to excluded interest income for Montana corporation license tax purposes; to apply the disallowance of deduction retroactively to all taxable periods during which such income is excluded from gross income; prohibiting consolidated returns for financial institutions under the corporate license tax; reaffirming the inclusion of state and local bond income in the definition of net income for corporation license tax purposes; and providing an immediate effective date and applicability dates.....Page 1611
674	401		Boylan	An act providing for the central and local recordation of water right transfers; providing that transfers made without prior approval of the Department of Natural Resources and Conservation must be approved after the transfer; amending section 85-2-403, MCA; and providing an immediate effective date.....Page 1613
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676		83	Hemstad	An act to amend section 13-1-106, MCA, to require that certain election polls open at 7 a.m.....Page 1619
677		100	Kemmis	An act to implement section 3 of Initiative 95; creating an in-state investment fund to be administered by the Montana Economic Development Board; providing for types of investments to be made; amending sections 17-6-201 and 17-6-211, MCA; and providing an immediate effective date.....Page 1619

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678		171	Williams	An act to revise the laws relating to the annexation of land into a fire district by deleting the provision for protests by freeholders within the area of the existing fire district; requiring approval by the board of trustees of a petition for annexation to the fire district; requiring published notice of a hearing on a petition for annexation to a fire district; amending section 7-33-2125, MCA.....Page 1626
679		228	Quilici	An act promoting consistency and continuity in the adoption and application of environmental rules after an application for an environmental permit has been completed; amending section 90-1-101, MCA.....Page 1627
680		335	Nilson	An act to increase license fees for activities regulated by the Department of Fish, Wildlife, and Parks; to establish a Class A-7 antlerless elk license; amending sections 87-2-301, 87-2-304, 87-2-501, 87-2-505, 87-2-507, 87-2-508, 87-2-601, and 87-2-701, MCA; and providing effective dates.....Page 1628
681		606	Koehnke	An act to establish the 55-mile-an-hour speed limit by legislative enactment; clarifying that a violation is not a misdemeanor; amending sections 61-8-304, 61-8-305, and 61-8-718, MCA; repealing Chapter 122, Laws of 1977; and providing an immediate effective date. .....Page 1631
682		742	O'Connell	An act to allow the options of assessing street lighting district costs according to the taxable valuation of the property; providing that protest be weighted according to the amount to be assessed against the property; amending sections 7-12-4305 and 7-12-4323, MCA; and providing an immediate effective date.....Page 1632
683		747	Marks	An act clarifying administration and reporting requirements related to the privilege tax for possession or beneficial use by a private individual, association, or corporation of property which for any reason is exempt from taxation; providing exemptions; amending sections 15-23-101 and 15-24-1203, MCA; and providing a severability clause and an applicability date.....Page 1633
684		749	Hemstad	An act providing for job sharing in state personnel positions; defining "job sharing"; encouraging the use of job sharing to increase productivity and employment opportunities; and requiring a report on implementation of job sharing to the 49th Legislature; amending sections 2-18-101 and 2-18-102, MCA.....Page 1635
685		776	Shontz	An act reestablishing the Board of Aeronautics under existing statutory authority and rules and changing the qualifications for membership on the Board; requiring the Board to approve airport grants and loans; amending sections 2-8-103 and 2-15-1812, MCA; and providing an immediate effective date.....Page 1638
686		871	Fagg	An act creating an Economic Development Board; creating an economic development guaranty fund; providing for the issuance of bonds to finance projects; designating types of projects to be funded; creating accounts necessary for carrying out the program; and providing rulemaking authority; amending section 90-6-104, MCA. .....Page 1641
687		909	Marks	An act requiring the Governor or his designee to study and prepare recommendations for providing services to developmentally disabled persons; and providing an effective date.....Page 1657
688		928	Bengtson	An act providing for administration of the cultural and aesthetic grants program by the Montana Arts Council; providing for grant conditions and expenditures; appropriating money for certain projects; and providing an effective date.....Page 1658
689	170		Boylan	An act to provide for reversion to the former owner of certain interests in real property acquired for a public use and later abandoned; and to modify the right of first refusal of the former owner of a real property interest acquired for a public use and later abandoned; amending sections 70-30-321 and 70-30-322, MCA.....Page 1661
690	186		Elliott	An act to authorize the Coal Board to consider applications for loans from the local impact and education trust fund account and to award grants and loans to governing bodies of federally recognized Indian tribes; and providing limitations; amending sections 90-6-205, 90-6-206, 90-6-208, and 90-6-209, MCA. .....Page 1662

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Chap. Num.	Senate Bill	House Bill	Sponsor	Title
691	317		Blaylock	An act reestablishing the Board of Hail Insurance under existing statutory authority and rules; revising provisions relating to the Board and to the hail insurance program; removing rate limits; amending sections 2-8-103, 2-15-3003, 80-2-201, 80-2-204, 80-2-221, 80-2-222, 80-2-224, 80-2-228, 80-2-232, and 80-2-241 through 80-2-244, MCA; and providing an immediate effective date. ....Page 1664
692	418		Jacobson	An act transferring the end-stage renal disease program to the Department of Health and Environmental Sciences; repealing administrative rules of the Department of Social and Rehabilitation Services implementing the chronic or end-stage renal disease treatment program; clarifying existing rulemaking authority for those rules; and adopting new rules governing the end-stage renal disease program until such time as rules are adopted by the Department; amending section 53-6-202, MCA; providing a termination date; and providing an immediate effective date. ....Page 1673
693	426		Story	An act to require state and local government agencies to comply with conditions and limitations contained in appropriation acts; and providing an effective date. ....Page 1675
694		68	Harper	An act limiting noise emissions from motorboats by authorizing fish and game wardens (state conservation officers) the power for enforcing public nuisance and disorderly conduct laws as they apply to the operation of motorboats; amending section 87-1-506, MCA; and providing an effective date. ....Page 1676
695		103	Winslow	An act to make the Coal Tax Oversight Subcommittee a permanent subcommittee of the Revenue Oversight Committee; appropriating funds for the operation of the subcommittee; and providing an effective date. ....Page 1677
696		118	Harper	An act to increase the maximum per lot fee chargeable for subdivision review; providing for a loan and repayment; amending section 76-4-105, MCA; and providing an immediate effective date. ....Page 1678
697		426	Bertelsen	An act to implement Article XI, section 9(2), of the Montana Constitution by providing for elections on the question of review of local government and procedures for the establishment and functioning of local government study commissions and for the implementation of their recommendations; amending sections 7-3-143 and 7-3-151, MCA. ....Page 1679
698		540	Vincent	An act revising the laws prohibiting driving under the influence of alcohol or drugs; making it an offense to drive a motor vehicle with a blood alcohol concentration of more than .10; providing for the admissibility of evidence; amending sections 61-5-205, 61-5-208, 61-8-101, 61-8-401 through 61-8-404, and 61-11-203, MCA. ..Page 1687
699		581	Fabrega	An act to require that motor vehicle fees and reimbursement be considered in computing each school district's general fund, transportation, and retirement levies and claims for school equalization aid; amending sections 20-9-141, 20-9-331, 20-9-333, 20-9-352, 20-9-501, and 20-10-144, MCA; and providing an effective date. ....Page 1694
700		656	Fagg	An act to expand and clarify the authority of the Department of Administration to allocate space in state buildings to state agencies located in Helena other than the university system; amending sections 2-17-101 and 5-17-101 through 5-17-103, MCA; and providing an immediate effective date. ....Page 1702
701		700	Fabrega	An act creating the Montana Economic Development Board; providing for the powers, duties, and composition of the board; providing authority to issue bonds to finance designated projects; creating necessary funds and accounts; amending section 90-6-104, MCA; and providing an immediate effective date. ....Page 1704
702		715	Waldron	An act to allow counties and municipalities to amend their final budgets because of shortfalls in revenues or savings; amending sections 7-6-2320, 7-6-2324, 7-6-4231, and 7-6-4235, MCA; and providing an effective date. ....Page 1720
703		721	Wallin	An act to create a Montana health facility authority with power to lend money to health institutions to construct or renovate health facilities; and empowering the authority to issue bonds to finance its projects; and providing an immediate effective date. ....Page 1723

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704		739	Keenan	An act establishing an investment credit against the individual income tax and the corporate license tax for certain corporations for taxable years beginning after December 31, 1982; amending sections 15-30-102 and 15-31-123, MCA, and Chapter 520, section 4, Laws of 1981; and providing an immediate effective date. ....Page 1733
705		885	Jacobsen	An act to approve the issuance of State of Montana coal severance tax bonds to finance the development of certain state hydroelectric projects, the rehabilitation and repair of certain state projects, and loans to political subdivisions and local governments for certain approved water development projects; to appropriate coal severance tax trust proceeds for debt service; to authorize the creation of a state debt; to allow the private sale of municipal revenue bonds to the State of Montana; amending section 7-7-4433, MCA; and providing an immediate effective date. ....Page 1736
706		908	Harper	An act providing for the amendment and study of the laws related to the acquisition, transportation, and use of water; amending sections 85-1-205 and 85-2-311, MCA; repealing section 85-1-121, MCA; and providing an immediate effective date and a termination date. ....Page 1746
707		418	Yardley	An act to earmark a portion of the oil severance tax for the local government block grant account; amending sections 15-1-501 and 15-36-112, MCA; and providing an effective date. ....Page 1749
708		600	McBride	An act establishing a local government block grant program providing financial assistance to municipalities and counties in Montana; providing a method for distribution of the funds; designating the Department of Commerce as the administering agency; appropriating money to the local government block grant account; amending section 61-3-536, MCA; and providing an effective date. ....Page 1750
709		400	Waldron	An act creating a displaced homemaker program and providing for an appropriation; amending section 25-1-201, MCA; and providing an effective date. ....Page 1754
710		902	Bardanouve	An act establishing state employee compensation plans and benefit levels; providing pay schedules for fiscal years 1984 and 1985; appropriating funds therefor; amending sections 2-18-106, 2-18-301, 2-18-303 through 2-18-305, 2-18-311, and 2-18-703, MCA; and providing an immediate effective date. ....Page 1758

APPROPRIATIONS

HB	Sponsor	Title
1	Vincent	An act implementing Section 4 of Initiative 95 by allocating interest on the coal tax trust fund to the Montana economic development fund; appropriating funds from the economic development fund to the Department of Commerce and the Department of Labor and Industry to accomplish the objectives established by the people of Montana with their approval of Initiative 95; authorizing loans from the general fund; and providing an immediate effective date. ....Page 1769
40	Shontz	An act to amend House Bill No. 500, Laws of 1981, to eliminate the requirement that the Department of Revenue deposit $13 million of liquor profits to the general fund during the biennium ending July 1, 1983; and providing an effective date and applicability date....Page 1771
76	Bardanouve	An act appropriating money for the operation of the Forty-Eighth Legislature and providing an immediate effective date. ....Page 1772
84	Lory	An act appropriating money to the Public Service Commission for the fiscal year ending June 30, 1983; and providing an immediate effective date. ....Page 1773
95	Donaldson	An act to appropriate money for sanitary review of subdivisions by the Department of Health and Environmental Sciences for the biennium ending June 30, 1983; and providing an immediate effective date....Page 1773
131	Menahan	An act appropriating money to the Department of Military Affairs to satisfy the final judgment in Cause No. 81-440, Montana Supreme Court; and providing an immediate effective date. ....Page 1773

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144	J. Brown	An act to appropriate money to the Governor's office to pay the state's share of the individual and family grant program providing disaster relief funds to flood victims. ....Page 1774
180	J. Brown	An act to appropriate funds to the Department of Institutions for payment of a judgment against the State of Montana by Marjorie Langlois; and providing an immediate effective date. ....Page 1774
187	Menahan	An act to appropriate a contingency fund of $300,000 to the Department of Social and Rehabilitation Services for in-home services as provided for in section 53-5-101, MCA. ....Page 1775
243	Asay	An act to appropriate funds to the Indian legal jurisdiction program in the office of the Governor for the fiscal year ending June 30, 1983; and providing an immediate effective date. ....Page 1775
247	Ryan	An act to appropriate $21,554 from the state equalization aid account to reimburse Petroleum County school districts for state equalization aid to which the districts were entitled in the 1981-82 school fiscal year; and providing an immediate effective date. ....Page 1776
285	Quilici	An act to appropriate money to the Department of Justice for the fiscal year ending June 30, 1983, to provide funding for ordered pay grade reclassification of highway patrol officers and uniformed highway patrol supervisory personnel; and providing an immediate effective date. ....Page 1776
317	Devlin	An act to appropriate money to satisfy a final judgment or settle all claims in Cause No. 79-14-GF, United States District Court for the District of Montana, Great Falls Division; and providing an immediate effective date. ....Page 1777
334	Roush	An act to appropriate money to the Department of Natural Resources and Conservation for administration of the 10-County Triangle Conservation District saline seep control project. ....Page 1777
407	J. Brown	An act to appropriate $25,000 to the Department of Social and Rehabilitation Services to create a statewide network of food banks; and providing an effective date and termination date. ....Page 1778
412	Bardanouve	An act appropriating money to various state agencies for the fiscal year ending June 30, 1983; providing for other matters relating to the appropriations; and providing an immediate effective date. ....Page 1778
435	Bardanouve	An act to increase agency budgets during the biennium ending June 30, 1983, which increases would usually be made by budget amendment; and providing an immediate effective date. ....Page 1780
447	Bardanouve	The General Appropriations Act of 1983 for the appropriation of money to various state agencies for the biennium ending June 30, 1985; and providing an effective date. ....Page 1783
510	Jones	An act to appropriate money to the Department of Social and Rehabilitation Services for special commodity distribution. ....Page 1815
526	C. Smith	An act appropriating funds to the Department of Revenue for the payment of a judgment against the department; providing that the appropriation is nonjudgmental; and providing an immediate effective date. ....Page 1816
597	Schye	An act to appropriate up to $48,000 to the Department of Natural Resources and Conservation for the purpose of administering a grant to the city of Glasgow and Valley County jointly for a city-county water project. ....Page 1816
692	Bardanouve	An act to appropriate $45,000 for administration and operation of the Flathead Basin Commission. ....Page 1817
745	Schye	An act to appropriate up to $100,000 to the Department of Natural Resources and Conservation to administer a grant to the Milk River Irrigation Districts and Liberty County for the purpose of applying to the federal Energy Regulatory Commission for a hydroelectric plant on the Tiber Dam. ....Page 1817
819	Asay	An act to appropriate funds to the Montana Bureau of Mines and Geology from the renewable resources development account for monitoring and assessing impacts on ground water in sensitive areas and for implementing a ground water information system. ....Page 1818
833	Manuel	An act to appropriate money for capital projects for the biennium ending June 30, 1985; to provide for other matters relating to the appropriations; and providing an immediate effective date. ....Page 1819

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876	Jacobsen	An act to appropriate money from the resource indemnity trust account to the Department of Natural Resources and Conservation for use by the Sheridan County Conservation District for an evaluation, quantification, and mapping of the ground water resources in the ancestral Missouri River Channel and adjacent areas in Sheridan, Roosevelt, Daniels, Valley, McCone, and Richland Counties.....Page 1825
892	Nilson	An act to appropriate supplemental funds to the Department of Fish, Wildlife, and Parks for the biennium ending June 30, 1983, to provide for backpayments resulting from reclassification of game wardens; and providing an immediate effective date.....Page 1826
896	Thoft	An act to appropriate $350,665 to the Department of Institutions to complete construction of the Children's Treatment Unit in Billings; and providing an immediate effective date.....Page 1827
897	Neuman	An act to appropriate money to the Department of Natural Resources and Conservation for loans and grants under the water development program, for grants under the renewable resource development program, and for loans under the rangeland improvement loan program; to approve loans from water development bond proceeds and to complete an appropriation for debt service; to reallocate certain resource indemnity trust account interest income and renewable resource development account funds for water development program loans and grants during the biennium ending June 30, 1985; to place certain conditions upon grants and loans; and providing an effective date.....Page 1827
898	Bardanouve	An act to appropriate money to the Department of Social and Rehabilitation Services for grant-in-aid assistance for the fiscal year ending June 30, 1983; to provide for any unused grant-in-aid appropriation to be carried into the 1985 biennium to be used for in-home health services and the 1985 biennium social and rehabilitation services contingency; to provide for a transfer of spending authority from medicaid to aid to families with dependent children; to transfer the fiscal 1983 appropriation for the chronic renal disease program from the Department of Social and Rehabilitation Services to the Department of Health and Environmental Sciences; to reappropriate unexpended funds for the renal program for expenditures in fiscal 1984; to provide spending authority for the eligibility determination program; and providing an immediate effective date. .....Page 1836
900	Manuel	An act to appropriate bond proceeds and other funds for capital projects for the biennium ending June 30, 1985; to provide for other matters relating to the appropriations; and providing an immediate effective date. .....Page 1837
901	Donaldson	An act appropriating money to the Department of Administration for payment of emergency and disaster assistance claims for flood damage occurring in May 1981; and providing an immediate effective date.....Page 1841
907	Dozier	An act appropriating money to the Department of Revenue for the fiscal year ending June 30, 1983, for the purpose of completing payment of the light vehicle fee reimbursement due Yellowstone County; and providing an immediate effective date. .....Page 1841
919	Peck	An act to appropriate funds to the Superintendent of Public Instruction for public school support other than for special education.....Page 1842
922	Fabrega	An act to appropriate money to the Department of Revenue to satisfy a judgment against the Department of Revenue; and providing an immediate effective date.....Page 1842
924	J. Brown	An act appropriating funds to the Department of Revenue for the payment of a judgment for attorney fees, costs, and disbursements against the department, together with interest thereon; providing that the appropriation is nonjudgmental; and providing an immediate effective date.....Page 1843

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1	Hazelbaker	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to adopt joint rules to govern their proceedings.....Page 1847
3	Himsl	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Department of Institutions to give the name "Bennett Hall" to the new wing at the Montana Veterans' Home in Columbia Falls in recognition of the exceptional professional and public service record of the late Willard Franklin Bennett, M.D. .....Page 1870

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4	Turnage	A Joint Resolution of the Senate and the House of Representatives of the State of Montana expressing support for the Maureen and Mike Mansfield Foundation and the development of the Mansfield Center for Pacific Affairs and the Maureen and Mike Mansfield Center at the University of Montana. ....Page 1871
5	Thomas	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to amend Joint Rules 6-1, 6-7, and 6-34, relating to changes in administrative rules, to make the joint rules compatible with statutory amendments made by House Bill No. 67....Page 1871
6	Mazurek	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to name the new division of workers' compensation building the "Margaret 'Peg' Condon Building"....Page 1874
7	Goodover	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging all Montana veterans of the United States Armed Forces to join the Montana Legislature in requesting that the Montana Congressional Delegation introduce federal legislation to have Congress designate a new national veterans' cemetery to be located in Montana and named the "Arlington West National Cemetery"....Page 1875
8	Severson	A Joint Resolution of the Senate and the House of Representatives of the State of Montana to send delegates to the Western States Legislative Forestry Task Force....Page 1875
9	Mohar	A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Department of Administration to appoint a member of the homebuilding industry to the Montana Building Code Advisory Council....Page 1876
10	Van Valkenburg	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the President and the Congress of the United States to conduct good faith negotiations with the Soviet Union on the reduction of nuclear weapons; to stop the development, production, and deployment of new nuclear weapons by the United States, the Soviet Union, or other nations of the world; to increase funding for human services and jobs programs as agreed to by President Reagan and Speaker O'Neill and in so doing to reduce the federal budget deficit; and requiring the Secretary of State to send copies of this resolution to the President of the United States and Montana's United States Senators and Representatives....Page 1877
12	Towe	A Joint Resolution of the Senate and the House of Representatives of the State of Montana suggesting that any plan for remodeling the State Capitol include workspace for Legislators....Page 1878
14	Norman	A Joint Resolution of the Senate and the House of Representatives of the State of Montana consenting to the Board of Regents authorizing the University of Montana to renovate the current Dornblaser Stadium or construct a new stadium complex....Page 1879
15	Turnage	A Joint Resolution of the Senate and the House of Representatives of the State of Montana commending citizens, law enforcement officials, and the media in Montana for their support of Crimestoppers, a voluntary effort to prevent crime and make Montana communities safer....Page 1879
17	Elliott	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Bonneville Power Administration to adopt a rate structure that will provide lower rates for its direct-service industrial customers....Page 1880
18	E. Smith	A Joint Resolution of the Senate and the House of Representatives of the State of Montana protesting proposed charges by federal agencies to rural electric and telephone cooperatives for right-of-way use and permits. ....Page 1881
21	Berg	A Joint Resolution of the Senate and the House of Representatives of the State of Montana recognizing Montana's Statehood Centennial in 1989; urging the Governor to begin planning and coordination; and requesting the Governor to make recommendations to the 49th Legislature on the administration of centennial activities....Page 1882
22	Conover	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the federal government and the Montana Department of Highways to cooperate with the local government of Stillwater County in providing funding to repair damages to Montana Secondary Highway No. 419 caused by transportation of chromium for the strategic mineral stockpile program of the United States government....Page 1883

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23	Goodover	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of tax credits, tax deductions, tax exclusions, and tax exemptions; and requiring a report of the findings of the study to the 49th Legislature.....Page 1884
24	Mazurek	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Montana Supreme Court, in cooperation with the State Bar of Montana and with staff assistance of the Legislative Council, to study and prepare recommendations for the 49th Legislature on updating and clarifying the laws on venue and statutes of limitation.....Page 1885
25	Marbut	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the creation of a unified court system and the financing of such a system; requiring a report of the findings of the study to the 49th Legislature.....Page 1886

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2	Winslow	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that the Coal Tax Oversight Subcommittee examine the impacts on state and local government services in Montana and North Dakota of the proposed Tenneco coal gasification plant at Wibaux and methods for cooperating with North Dakota to mitigate such impacts. .....Page 1887
4	Nordtvedt	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of options and alternatives for investing state retirement funds, coal tax trust funds, and other cash funds; requiring a report of the study findings to the 49th Legislature.....Page 1888
6	Kitselman	A Joint Resolution of the Senate and the House of Representatives of the State of Montana encouraging the Superintendent of Public Instruction and the Commissioner of Higher Education to develop and expand economics programs and to encourage the offering of more economics courses in Montana's high schools, colleges, and universities.....Page 1889
9	Hand	A Joint Resolution of the Senate and the House of Representatives of the State of Montana consenting to the construction of a swim center at Western Montana College. .....Page 1890
11	Harrington	A Joint Resolution of the Senate and the House of Representatives of the State of Montana reaffirming the State's commitment to economic development consistent with responsible stewardship and acknowledging the responsibility of business enterprises and labor and individuals to reduce the impact of cessation or suspension of industrial activity. .....Page 1890
12	Swift	A Joint Resolution of the Senate and the House of Representatives of the State of Montana opposing the federal administration's plan to sell public lands.....Page 1892
14	Connelly	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the United States Congress to enact legislation that provides for annual budget review of the Bonneville Power Administration by the Pacific Northwest Electric Power and Conservation Planning Council. .....Page 1893
15	Spaeth	A Joint Resolution of the Senate and the House of Representatives of the State of Montana recognizing the importance of a viable sugar industry in the State of Montana; encouraging Great Western Sugar Company and the sugar beet growers to resume bargaining and reach an acceptable resolution of their differences for the benefit of all parties, including the people of the State of Montana; and requesting that the Montana Department of Agriculture coordinate the efforts of the State in preserving Montana's sugar industry. .....Page 1894
17	Menahan	A Joint Resolution of the Senate and the House of Representatives of the State of Montana concerning the classification, pay, and other conditions of employment of legislative employees.....Page 1894
18	Quilici	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that a committee of Legislators be assigned to review the final power plan developed by the Pacific Northwest Electric Power and Conservation Planning Council and to make appropriate recommendations.....Page 1897

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20	Marks	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Department of Health and Environmental Sciences to review the rules adopted under the Montana sanitation in subdivisions law; requesting the department to amend or repeal those rules which are not consistent with the purposes of that act; requesting the department to adopt rules to minimize the cost of review of subdivision proposals; and requesting the review of rules to be completed by July 1, 1984.....Page 1899
21	Bengtson	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Congress of the United States to amend the bankruptcy laws to make it more difficult for individuals to discharge student loan debts in a bankruptcy proceeding.....Page 1900
22	Bengtson	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Congress of the United States to amend the bankruptcy laws to permit an institution of higher education to withhold release of a transcript to a student loan debtor until the student loan is declared discharged.....Page 1901
23	Bergene	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the development of community-based corrections.....Page 1902
26	Ernst	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the United States Congress to adopt rules limiting amendments to bills to the subject matter reflected in the title of the bill.....Page 1903
27	Shontz	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging Congress to fully fund saline seep and other research by the Northern Plains Soil and Water Research Center.....Page 1904
29	Ramirez	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the insurance laws of the State of Montana and requiring a report of the findings of the study to the 49th Legislature.....Page 1905
30	Menahan	A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging that state executive, judicial, and legislative agencies, local governments, and the Montana University System give preference to Montana citizens in filling state, local government, and university system positions.....Page 1906
31	Williams	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that the Revenue Oversight Committee conduct a comprehensive study of the property tax classification system and equalization within the classes of property in the State of Montana.....Page 1907
35	Jacobsen	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the classification, evaluation, and assessment of agricultural land for tax purposes, the laws and existing and proposed administrative rules relating thereto, and the existing and proposed tax computation methods; requiring a written report of the study to the 49th Legislature.....Page 1908
36	Keyser	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study to identify and provide for preservation of the rights of landowners adjacent to public land and waterways and to identify and provide for rights of the public to access and use public land and waterways; requiring a report of the findings of the study to the Legislature.....Page 1910
38	Bardanouve	A Joint Resolution of the Senate and the House of Representatives of the State of Montana expressing the hope for lasting friendship, understanding, and communication with the people of the Kumamoto prefecture.....Page 1911
40	Stobie	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of the management of the state lands resources, particularly state forest resources.....Page 1912
41	Williams	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study of Montana's employment preference laws concerning veterans, veterans' spouses and dependents, and disabled civilians; and requiring a report of the findings and recommendations of the study to the 49th Legislature.....Page 1913

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44	Ramirez	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study to explore mechanisms or procedures to assist the Legislature in decisionmaking concerning public employee retirement systems and requiring a report of the findings of the study to the 49th Legislature....Page 1916
45	Connelly	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim study to clarify the role of community colleges in the public education system of the State of Montana. ....Page 1917
47	Vincent	A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that an interim study be conducted to examine the status of Montana-Canadian relations and provide recommendations on how state government can become better equipped to deal with border issues. ....Page 1918

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3	Goodover	A Resolution of the Senate of the State of Montana that the Department of Administration proceed with the capitol renovation plan that retains the Senate chambers in their present location....Page 1923
4	Stephens	A Resolution of the Senate of the State of Montana transmitting recommendations to the Montana Districting and Apportionment Commission regarding its redistricting plan submitted under Article V, section 14, of the Montana Constitution. ....Page 1924
5	Stephens	A Resolution of the Senate of the State of Montana honoring the First Special Service Force for its sacrifices and accomplishments during World War II and supporting the placement of a memorial during the celebration of the 40th Anniversary of the Allied Liberation of Rome....Page 1930

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2	Brand	A Resolution of the House of Representatives of the State of Montana transmitting recommendations to the Montana Districting and Apportionment Commission regarding its redistricting plan submitted under Article V, section 14, of the Montana Constitution....Page 1933
3	Vincent	A Resolution of the House of Representatives of the State of Montana to create a house standing committee on human services and aging and a house standing committee on business and labor; amending House Rule H3-1. ....Page 1935
5	Kitselman	A Resolution of the House of Representatives of the State of Montana honoring the First Special Service Force for its sacrifices and accomplishments during World War II and supporting the placement of a memorial during the celebration of the 40th Anniversary of the Allied Liberation of Rome. ....Page 1935

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SESSION LAWS

CHAPTER NO. 1

AN ACT TO CLARIFY THE LAW RELATING TO THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP; AMENDING SECTION 41-3-603, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-603, MCA, is amended to read:

"41-3-603. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a written motion for the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this part or in *40-6-135* or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services."

Approved January 21, 1983.

CHAPTER NO. 2

AN ACT TO CHANGE 'INFANT' TO 'MINOR' WHERE APPROPRIATE THROUGHOUT THE CODE IN ORDER TO ACHIEVE CONSISTENCY WITH TITLE 41, MCA; AMENDING SECTIONS 15-30-135, 25-5-301, 27-1-319, 70-29-102, 70-29-209, 70-29-210, 70-29-303, 70-29-305, 70-29-306, 70-29-327, 72-14-302, AND 72-20-407, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-135, MCA, is amended to read:

"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax shall be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided, except to the extent

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such estates and trusts shall be held for educational, charitable, or religious purposes, which tax shall be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust;

(d) income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of *a minor*, to be held or distributed as the court may direct; and

(e) income of an estate during the period of administration or settlement permitted by subsection (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be taxable with reference to the income of such estate or trust. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this chapter for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States or any state, territory, or any political subdivision thereof or the District of Columbia. In cases under subsections (d) and (e) of subsection (1) of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1) of this section, the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under 15-30-112 and the fiduciary of any estate or trust created by a person not a resident or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under 15-30-131.

(4) (a) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries and the amount of the income collected by a guardian of *a minor*, which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in

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computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this subsection shall not be allowed as a deduction under subsection (4)(b) of this section in the same or any succeeding taxable year.

(b) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

(c) If the taxpayer's net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases, a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(5) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(6) Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor."

Section 2. Section 25-5-301, MCA, is amended to read:

"25-5-301. Appointment of guardian. When a guardian ad litem is appointed by the court, he must be appointed as follows:

(1) when the *minor* is plaintiff, upon the application of the *minor* if he be of the age of 14 years or, if under that age, upon the application of a relative or friend of the *minor*;

(2) when the *minor* is defendant, upon the application of the *minor* if he be of the age of 14 years and apply within 10 days after the service of

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the summons or, if under that age or if he neglects so to apply, upon the application of a relative or friend of the *minor* or of any other party to the action;

(3) when an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person or of any other party to the action or proceeding."

Section 3. Section 27-1-319, MCA, is amended to read:

"27-1-319. Willful holding over of real property. For willfully holding over real property by a person who entered upon the same as guardian or trustee for *a minor* or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over."

Section 4. Section 70-29-102, MCA, is amended to read:

"70-29-102. Action by minor. (1) An action for the partition of real property shall not be brought by *a minor*, except by the written authority of the district judge of the county in which the property or a part thereof is situated. The authority shall not be given unless the district judge is satisfied, by affidavit or other competent evidence, that the interests of the *minor* will be promoted by bringing the action.

(2) A judgment for a partition shall not be rendered in such an action unless the court is satisfied that the interests of the *minor* will be promoted thereby and that fact is expressly recited in the judgment.

(3) A guardian ad litem for *a minor* party, in an action for partition, can be appointed only by the court or judge and must give an undertaking in a sum fixed by the judge for the faithful discharge of his trust, which undertaking must be approved by the judge and filed with the clerk."

Section 5. Section 70-29-209, MCA, is amended to read:

"70-29-209. Compensation of one party by another in certain cases of partition. (1) When it appears that a partition cannot be made equal between the parties according to their respective rights without prejudice to the rights and interests of some of them and a partition be ordered, the court may adjudge compensation to be made by one party to another on account of the inequality, but such compensation shall not be required to be made to others by owners unknown or by *a minor* unless it appears that such *minor* has personal property sufficient for that purpose and that his interest will be promoted thereby.

(2) In all cases the court has power to make compensatory adjustment between the respective parties according to the ordinary principles of equity."

Section 6. Section 70-29-210, MCA, is amended to read:

"70-29-210. Consent of guardian to share of ward. The general guardian of *a minor* and the guardian entitled to the custody and management of the estate of a seriously mentally ill person or other person

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adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize his being made a party to an action, may agree upon the share to be set off to such *minor* or other person entitled and may execute a release, in his behalf, to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court."

Section 7. Section 70-29-303, MCA, is amended to read:

"70-29-303. Who may not be purchasers. (1) Neither of the referees nor any person for the benefit of either of them can be interested in any purchase, nor can a guardian of *a minor* party be interested in the purchase of any real property being the subject of the action except for the benefit of the *minor*.

(2) All sales contrary to the provisions of this section are void."

Section 8. Section 70-29-305, MCA, is amended to read:

"70-29-305. Court to direct terms of credit and investment. The court must, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit and for that portion of which the purchase money is required by the provisions herein contained to be invested for the benefit of unknown owners, *minors*, or parties out of this state."

Section 9. Section 70-29-306, MCA, is amended to read:

"70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit for the:

(1) shares of any known owner of full age, in the name of such owner;

(2) shares of *a minor*, in the name of the guardian of such *minor*; and

(3) other shares, in the name of the clerk of the court of the county and his successors in office."

Section 10. Section 70-29-327, MCA, is amended to read:

"70-29-327. Minor's share of proceeds — payment to guardian. When the share of *a minor* is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action upon giving the security required by law or directed by order of the court."

Section 11. Section 72-14-302, MCA, is amended to read:

"72-14-302. Statute of limitations. Such action must be brought within 5 years from the date on which the money or property is received by the state treasurer, saving, however, to *minors* and persons of unsound mind or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or 5 years after their respective disabilities cease."

Section 12. Section 72-20-407, MCA, is amended to read:

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"72-20-407. Objections to account — hearing — decree. (1) Upon or before the return day, any beneficiary of the trust may file his written objections or exceptions to the account filed or to any action of the trustee or trustees set forth therein.

(2) The court may appoint either the legal guardian of a beneficiary or a guardian ad litem to represent the interest of any such beneficiary who is *a minor* or of unsound mind or otherwise legally incompetent or who is yet unborn or unascertained, and such beneficiary shall be bound by any action taken by such representative. Every unborn or unascertainable beneficiary shall be concluded by any action taken by the court for or against any living beneficiary of the same class or whose interests are similar to the interests of such unborn or unascertainable beneficiary.

(3) At the same time or at some later day fixed by the court if so requested by one or more of the parties, the court, without the intervention of a jury and after hearing all the evidence submitted, shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth therein, including the purchase, retention, and disposition of any of the property and funds of the trust and shall render its decree either approving or disapproving the same or any part thereof and, in addition, may surcharge the trustee or trustees for all losses, if any, caused by negligent or willful breaches of trust."

Approved January 27, 1983.

CHAPTER NO. 3

AN ACT TO REQUIRE THE GOVERNOR TO TRANSMIT A COPY OF EACH VETO MESSAGE TO THE LEGISLATIVE COUNCIL; CLARIFYING THOSE STATE AND FEDERAL AGENCIES ENTITLED TO RECEIVE COPIES OF THE MONTANA SESSION LAWS; REPEALING THE REQUIREMENT FOR THE PUBLICATION OF NAME CHANGES IN THE SESSION LAWS; AMENDING SECTION 5-11-203, MCA; REPEALING SECTION 27-31-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transmittal of veto messages to legislative council.** The governor shall transmit one copy of each veto message to the legislative council.

Section 2. Section 5-11-203, MCA, is amended to read:

"5-11-203. Distribution of senate and house journals and session laws. (1) Immediately after the senate and house journals and the session laws are bound, the legislative council shall distribute them.

(2) The council shall distribute the house and senate journals as follows:

(a) to each county clerk, one copy of each for the use of the county;

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(b) to the Montana state library, 20 copies of each for the use of the library and distribution to depository libraries, of which 2 copies will be deposited with the state historical library for security purposes;

(c) to the state law librarian, two copies of each for the use of the library and such additional copies as may be necessary for the purposes of exchange;

(d) to the library of congress and each public officer as defined in 2-2-102, two copies of each; and

(e) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the journals were adopted, one copy of each.

(3) The council shall distribute the session laws as follows:

(a) to each *cabinet level* department of the executive branch of the United States, *one copy each*; *to any* agency, commission, conference, or corporation established by the United States government, or any other subdivision thereof upon request and approval by the legislative council, one copy;

(b) to the library of congress, eight copies;

(c) to the state library, two copies;

(d) to the state historical library, two copies;

(e) to the state law librarian, four copies for the use of the library and such additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;

(f) to the library of each custodial institution, one copy;

(g) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102(8), one copy;

(h) to any agency, board, commission, or office of the state other than a state officer and to any other subdivision of the state upon request and approval by the legislative council, one copy;

(i) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;

(j) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;

(k) to each county clerk, three copies for the use of the county; and

(l) to each county attorney and to each clerk of a district court, one copy."

Section 3. **Repealer.** Section 27-31-205, MCA, is repealed.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved January 27, 1983.

CHAPTER NO. 4

AN ACT TO CLARIFY THE LAW RELATING TO LEGISLATIVE COUNCIL REVIEW OF BALLOT ISSUES; PROVIDING THAT COUNCIL REVIEW MUST BE ACCOMPLISHED PRIOR TO SUBMISSION OF THE SAMPLE PETITION TO THE SECRETARY OF STATE; AMENDING SECTION 13-27-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-202, MCA, is amended to read:

"13-27-202. Recommendations — approval of form required. *(1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:*

(a) The text of the proposed measure must be submitted to the legislative council for review.

(b) The council staff shall review the text for clarity, consistency, and any other factors the council staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the council staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider any such recommendations and respond in writing to the council, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative council shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy thereof available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition sheet to the attorney general for his approval. The secretary of state and attorney general must each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any.

(4) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the petition. The secretary of state shall send written notice to the person who submitted the petition sheet of the approval within 28 days after submission of the petition sheet. The secretary of state shall send written notice if the petition has been rejected together with reasons for rejection within 14 days after submission of the petition sheet."

Approved January 27, 1983.

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CHAPTER NO. 5

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO BUILDING AND LOAN ASSOCIATIONS; AUTHORIZING THE FORMATION OF CAPITAL STOCK ASSOCIATIONS; PROVIDING FOR CONVERSION BETWEEN CAPITAL STOCK AND MUTUAL ASSOCIATIONS; AMENDING SECTIONS 32-2-101, 32-2-201, 32-2-205, 32-2-207 THROUGH 32-2-212, 32-2-221, 32-2-224, 32-2-231, 32-2-301, 32-2-309, 32-2-401, 32-2-404, 32-2-410, 32-2-416 THROUGH 32-2-418, 22-2-431, 32-2-432, 32-2-441, AND 32-2-501 THROUGH 32-2-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2-101, MCA, is amended to read:

"32-2-101. Purpose — definitions. (1) A corporation operated for the purpose of encouraging home ownership and thrift and making substantially all of its loans on real estate mortgage security shall be known in this chapter as a building and loan association or a savings and loan association and is under the supervision of the department, which shall enforce all laws with respect to it.

(2) The associations have continual succession and shall be organized under the provisions of this chapter.

(3) When used in this chapter, the following definitions apply:

(a) "Building and loan association" includes savings and loan associations organized under this chapter.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Capital stock" means the aggregate of shares of nonwithdrawable capital issues by a capital stock association.

(d) "Member" means:

(i) a person holding a savings account of a mutual association;

(ii) a person borrowing from or assuming or obligated upon a loan or an interest therein held by the association;

(iii) a person purchasing property securing a loan or interest therein held by such association; or

(iv) any other person obligated to the association.

(e) "Mutual association" means a building and loan association formed without authority to issue stock.

(f) "Savings account" means that part of the savings liability of the association which is credited to the account of the holder thereof and includes any form of withdrawable deposit.

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(g) "Stock association" means a building and loan association formed with authority to issue stock.

(h) "Stockholder" means the holder of one or more shares of any class of capital stock of a capital stock association organized and operating pursuant to the provisions of this chapter.

(4) For the purposes of subsection (3)(d), a joint, survivorship, or any other multiple owner or borrower relationship constitutes a single membership."

Section 2. Section 32-2-201, MCA, is amended to read:

"32-2-201. Articles of incorporation — contents. Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this chapter, they shall prepare and file articles of incorporation to that effect in the manner specified in this chapter. Such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, which may not be the same as or too closely resemble that in use by any existing corporation established under the laws of this state. The words building and loan association or savings and loan association shall form a part of the name, and a corporation not organized under this chapter may not use a name embodying that combination of words, provided that the associations existing as of May 1, 1927, may continue their present names.

(2) the principal office or place of business of the association, which shall be within this state;

(3) *if a capital stock association,* the *aggregate* number of shares which the *corporation will have authority to issue;*

(4) a provision that such association is organized under this chapter for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators."

Section 3. Section 32-2-205, MCA, is amended to read:

"32-2-205. Investigation — certificate of incorporation, how issued. *(1)* (a) When the articles of incorporation are in proper form and regularly executed and the bylaws have been duly approved as required in 32-2-204 and, *in the case of a mutual association, the requirements of [section 27] have been complied with or, in the case of a capital stock association, the requirements of [section 30] have been complied with,* the department shall then ascertain from the best sources of information at its command the responsibility, character, and general fitness of the incorporators. The department shall also determine whether there is a reasonable need for the existence of the association and whether the public convenience and advantage will be promoted by its existence.

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(b) If the department is not satisfied with the result of its investigations of the matters specified in this section, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, refuse to issue the certificate described in this section.

(c) If it is satisfied with the result of its investigations, it shall, within 60 days after the articles of incorporation and bylaws have been presented to it, issue under its official seal a certificate reciting in substance the filing in its office of the articles of incorporation and bylaws.

(2) (a) The certificate shall also state that the articles and bylaws conform to all the requirements of this chapter, that the department has approved them and that it believes that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this chapter and the bylaws, that there is a reasonable need for the existence of the building and loan association, and that the public convenience and advantage will be promoted thereby.

(b) The certificate shall be made in quadruplicate and attached to each copy of the articles of incorporation, one of which shall be retained by the department. The other three shall be returned to the incorporators, who shall immediately file one copy with the secretary of state and one with the clerk and recorder of the county in which the principal place of business of the association is located. The other copy shall be retained by the association.

(c) Immediately upon the receipt of the certified copy, the secretary of state shall issue a certificate of incorporation, at which time the incorporation of the association is complete."

Section 4. Section 32-2-207, MCA, is amended to read:

"32-2-207. Removal of directors. No director shall be removed from office except as herein provided or by a vote of the *members of a mutual association representing two-thirds of the withdrawable deposits in the association or the* stockholders *of a capital stock corporation* holding two-thirds of the capital stock, at a general meeting held after previous notice given in the manner provided in 32-2-209. Meetings of the *members or* stockholders for this purpose may be called by the president or by a majority of the directors or by stockholders holding not less than 25% of the capital stock."

Section 5. Section 32-2-208, MCA, is amended to read:

"32-2-208. Meetings of stockholders and directors. (1) The meetings of the *members or* stockholders of a Montana building and loan association must be held at its office or principal place of business in this state.

(2) In its bylaws, such association shall provide for at least one regular meeting of *members or* stockholders annually. Notice of any meeting, whether regular or special, shall be given by the secretary in accordance with 32-2-209. The board of directors shall have the right to call a special meeting at any time. The board of directors must also call a special meeting whenever petitioned to do so by:

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(a) members of a mutual association representing at least 25% of the withdrawable deposits of the association; or

(b) stockholders owning at least 25% of the issued stock.

(3) The secretary shall call special meetings in the same manner as provided in 32-2-209."

Section 6. Section 32-2-209, MCA, is amended to read:

"32-2-209. Notice of meetings. (1) At least 30 days prior to any annual or special meeting of any association, a notice stating the time and place of *the* meeting shall be deposited in the post office at the principal place of business of such association, directed to each member *or stockholder* at his address, as the same appears at the time on the books of the association, and when so deposited, postage prepaid, shall be deemed a legal and sufficient notice of any meeting.

(2) In addition thereto notice may be given by four consecutive weekly publications in a newspaper published in the county where the association has its principal place of business. Such publication shall be complete on the day of the fourth publication.

(3) In notices of special meetings there shall be attached to and accompanying such notice a statement of any matter or matters to be considered at said meeting.

(4) All members *or stockholders* of *the* association shall be entitled to vote at *the* meetings in person or by proxy."

Section 7. Section 32-2-210, MCA, is amended to read:

"32-2-210. Proxies. At least once every year the board of directors of every building and loan association shall, by resolution, cause the secretary of such association to mail to every *member or* stockholder of such association a blank form of proxy, and the *member or* stockholder may withdraw his former proxy and substitute another in its stead. Every proxy shall continue in force and be binding upon the *member or* stockholder until such proxy is revoked or another substituted."

Section 8. Section 32-2-211, MCA, is amended to read:

"32-2-211. Transfer of stock or account — effect. *(1)* The delivery of a *capital* stock certificate of a building and loan association to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign, or transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the building and loan association to pay any dividend due upon the stock or treat the holder of record as the holder in fact until such transfer is recorded upon the books of the building and loan association or a new certificate is issued to the person to whom it has been transferred.

(2) A savings account or any interest therein is transferable on the books of the association only upon proper written application and acceptance by the association of the transferee as a member, subject to terms

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approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof without being affected by any notice to the contrary unless the association has acknowledged in writing the receipt of notice of a pledge of the savings account."

Section 9. Section 32-2-212, MCA, is amended to read:

"**32-2-212. Requirements of transfer in certain cases.** When a certificate of stock *or a savings account* in a building and loan association is owned by persons residing out of the state or is lost, the president, secretary, or directors of such association, before entering any transfer of such stock *or account* on its books or before issuing a new certificate therefor to the transferee or owner, may require from the attorney or agent of the owner or from the person claiming under the transfer an affidavit or other evidence that the owner was alive at the date of the transfer or that the original certificate is lost and has not been assigned or transferred and may also require from the attorney, agent, or claimant a bond of indemnity, with a surety or sureties satisfactory to the officers of such association, to protect such association against any liability to the owner, assignee, or transferee of such shares *or account* or the legal representatives of the owners of such shares *or account*, in case of his or her death before the transfer, and also to protect *the* association against any liability accruing or resulting by reason of said lost or original certificate being thereafter presented to it. If *the* affidavit or other evidence or bond *is* not furnished when required as herein provided, neither *the* association nor any officer thereof shall be liable for refusing to enter the transfer on the books of the association."

Section 10. Section 32-2-221, MCA, is amended to read:

"**32-2-221. Foreign associations — requirements.** (1) An association, as defined in 32-2-103, organized under the laws of any other state, of the United States, or of any foreign government shall, before doing business in this state, file with the secretary of state and the department a duly authenticated copy of their charter, articles of incorporation, or articles of agreement and also a statement, verified by oath of the president and secretary of the corporation or managing officials if other than a corporation and duly verified, showing:

(a) the name of the association and the location of its principal office or place of business outside this state and the location of the place of business or principal office in this state;

(b) the names and residences of the officers, trustees, or directors;

(c) the amount of capital stock, *if any, and savings liability*;

(d) the amount of capital invested in the state of Montana.

(2) The association shall also file, at the same time and in the same offices, a certificate, signed by its president, vice-president, or other acting head and by its secretary, if there is one, certifying that the association has consented to all the license laws and other laws of this state relative to foreign associations and has consented to be sued in the courts of this state upon all causes of action arising against it in this state and that service of process may be made upon a citizen of this state, whose name and

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place of residence shall be designated in the certificate. Service of process on that agent is valid service on the association."

Section 11. Section 32-2-224, MCA, is amended to read:

"32-2-224. Shares of stock and savings accounts subject to attachment. The stock or *savings accounts* of such foreign associations doing business in this state shall be subject to attachment in the same manner as now provided by law in the case of domestic associations."

Section 12. Section 32-2-231, MCA, is amended to read:

"32-2-231. Consolidation and transfer — branching prohibited. (1) Only building and loan associations organized and chartered under the laws of the state of Montana may, with the approval of the department, consolidate and become incorporated in one body, with or without any dissolution or division of the funds or property of any of them. Any association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of directors and ratified by a two-thirds vote of the shares *or members owning at least two-thirds of the withdrawable deposits in the association,* present and voting in person or by proxy at a special meeting or meetings of the stockholders *or members* of the respective associations convened for that purpose, upon notice given as provided by law; the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

(2) Branching by merger or branching otherwise between a building and loan association organized and chartered under the laws of Montana and a building and loan association organized and chartered under the laws of any other state is prohibited. Branching de novo in Montana by a foreign-chartered building and loan association is prohibited.

(3) Insofar as this section limits or reduces the rights, powers, or privileges of building and loan associations previously granted by law, it shall apply only to proposed consolidations or mergers of associations which are initiated by action taken by their board of directors and shareholders subsequent to April 14, 1977."

Section 13. Section 32-2-301, MCA, is amended to read:

"32-2-301. Examinations by department. The department shall examine all building and loan associations doing business in this state at least once a year. Also, when the holders of 10% of the subscribed stock *or members holding 10% of the withdrawable deposits* of an association file a written application with the department requesting it to make a special examination of an association, it shall make the examination immediately. The expense of the examiner making the examination shall be paid by the association examined, and the examiner's finding shall be available to the petitioners and the board of directors of the association notwithstanding any provisions to the contrary contained in this chapter."

Section 14. Section 32-2-309, MCA, is amended to read:

"32-2-309. Insolvency or impairment of association — powers of department. (1) When it appears to the department that the

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affairs of a building and loan association are in an unsound condition or that it is conducting its business in an unsafe or unlawful manner, the department may take possession of all books, records, and assets of every description of the association and retain possession of them pending the further proceedings specified in this section.

(2) If the board of directors, secretary, or person in charge of the association refuses to permit the department to take possession, the department shall communicate that fact to the attorney general. The attorney general shall at once institute the proceedings necessary to place the department in immediate possession of the property of the association.

(3) Upon taking possession of the effects of the association, the department shall prepare a full and true statement of the affairs and condition of the association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues, and claims belonging to it and pay the immediate and reasonable expenses of the department's trust.

(4) When the condition of the association has been fully ascertained and it appears that the affairs of the association are in fact in an unsound condition, the department shall at once notify, in writing, the board of directors of the association of its decision, giving them 20 days in which to restore the affairs of the association to sound condition.

(5) Meanwhile, the department shall remain in charge of the books, records, and assets of every description of the association, shall attend or be represented at all directors and stockholders *or members* meetings held, and shall suggest those steps it considers necessary to restore the association to a sound condition.

(6) If the association is not restored to a sound condition within 20 days, the department shall report the facts to the attorney general. The attorney general shall institute proceedings in the district court of the county in which the association has its principal place of business for the appointment of the department as receiver.

(7) As receiver, the department may collect all moneys due the association and may do those other acts which are necessary to conserve its assets and business, and it shall liquidate the association's affairs. The department may, except as otherwise limited by the terms of this chapter, do any acts necessary or, in its discretion, desirable for the protection of the property and assets of the association and the speedy and economical liquidation of its assets and affairs and the payment of its creditors or for the resumption of business of the association where that is practicable or desirable. The department may institute in its own name or in the name of the association those legal proceedings it considers expedient for those purposes.

(8) By applying to the district court of the county in which the association is located, or to the judge thereof in chambers, the department may, upon sufficient showing of cause, obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell any of the assets.

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The sale may be made to stockholders, *members,* officers, directors, or others interested in the association, on consent of the court. On the proceedings the association shall be made a party by notice issued on order of the court or judge, in place of summons but served in like manner. The hearing of the application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the association has had 5 days' notice of the application."

Section 15. Section 32-2-401, MCA, is amended to read:

"32-2-401. Powers and duties of building and loan associations. A building and loan association may:

(1) have continual succession by its corporate name;

(2) sue and be sued in any court;

(3) make and use a common seal and alter it at pleasure;

(4) appoint those officers or agents the business of the corporation requires and pay them suitable compensation;

(5) enter into obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation;

(6) issue stock to *stockholders and savings certificates to* members on the terms and conditions the *articles of incorporation* and bylaws provide;

(7) assess and collect from members interest on loans at the times and in the amount provided for in the *articles of incorporation* and bylaws;

(8) permit members to withdraw all or part of their *savings* at the times and upon the terms as the *articles of incorporation* and bylaws may provide;

(9) cancel *savings certificates* upon which all credits have been withdrawn or upon which loans have been canceled or *savings* upon which no payments have been made for a period of 6 months, by returning to the *members* all credits, if any, and reissue the *certificates* as new *savings certificates*;

(10) issue *savings certificates* to minors and permit *them* to be withdrawn as other *savings certificates*. The receipt by the minor is a valid acquittance if his rights have been fully secured to him.

(11) acquire, hold, encumber, and convey that real estate and personal property necessary for the transaction of its business or necessary to enforce or protect its securities;

(12) borrow money, only when necessary and not exceeding 20% of its assets, except when borrowing from the federal home loan bank as provided in 32-2-405, and issue its promissory note for the loan;

(13) make loans to members on the security of the *savings accounts* of the association and also on their notes secured by first mortgages on improved real estate, including suburban homes but not on farm lands or mining property, for not to exceed 75% of the actual value of the real

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estate and upon the terms and conditions which may be provided in the *articles of incorporation* and bylaws;

(14) cancel those loans and release the securities on those terms the board of directors may provide;

(15) invest the money of the association in accordance with 32-2-406;

(16) loan money to other building and loan associations;

(17) make distribution of all *interest and dividends earned* after payment of expenses and setting aside a sum for the contingent funds as provided in this chapter;

(18) amend its articles of incorporation by changing the name, place of business, the number of directors, and increase or decrease the capital stock, and provide for its own continual succession by a majority vote of its directors. However, those amendments are of no effect until approved by the department.

(19) dissolve the corporation in accordance with the provisions of this chapter;

(20) provide, by *articles of incorporation* and bylaws adopted or amended by its board of directors, for the proper exercise of the powers granted in this section and the conduct and management of its affairs;

(21) exercise those other powers which are necessary and proper to enable the corporation to carry out the purpose of its organization."

Section 16. Section 32-2-404, MCA, is amended to read:

"32-2-404. Savings account withdrawal. (1) No charge or fee, except as provided in this section, may be made against a member who withdraws his *savings*, after having given 30 days' notice of the withdrawal. No fine of any description may be made upon the value of that *savings account* because of the withdrawal. A member who withdraws his *savings* or whose *savings account* is matured is entitled to receive all *sums* paid in and all *interest* declared, less interest, if any, as provided in 32-2-402, less a reasonable membership fee not exceeding 2% of the *amount* of *his deposit*, and less a pro rata share of all losses, if any, which have occurred. No other fine or assessments may be made against the *savings*.

(2) Applications for withdrawal shall be registered on the books of the association in the order received, and one-half of all cash collections not required to meet outstanding contracts must be used for the payment of the matured *savings* and of the withdrawals in the order registered. The other half of those collections each month may be used for the payment of withdrawals other than in the order registered, but no member may receive more than $100 in any one month other than by payment of an application for withdrawal in the order registered. The term "outstanding contracts" includes the costs and expenses of operation, completion of loans, payment of taxes and assessments and necessary remodeling and repairs on properties owned by or mortgaged to the association, repayment of all borrowed money, and all fixed charges."

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Section 17. Section 32-2-410, MCA, is amended to read:

"32-2-410. Fund for contingent losses. The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least 5% of the net earnings shall be set aside each year for such fund until it reaches at least 5% of the book value of the *savings deposits*. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below 5% of the *savings deposits*, it shall be replenished by annual appropriations of at least 5% of the earnings, as hereinbefore provided, until it again reaches said amount."

Section 18. Section 32-2-416, MCA, is amended to read:

"32-2-416. Joint ownership. Any building and loan association may issue *savings certificates and* shares to or in the name of two or more persons, whether husband and wife or otherwise; withdrawal by any one of such persons and the receipt or acquittance of any one of such persons shall be valid and sufficient release and discharge to the association for such withdrawals, regardless of the death or disability of any other such joint shareholder *or certificate holder*."

Section 19. Section 32-2-417, MCA, is amended to read:

"32-2-417. Trust — payment. Whenever any shares of stock shall be purchased *or savings deposits made* in any building and loan association by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased *or savings deposits made*."

Section 20. Section 32-2-418, MCA, is amended to read:

"32-2-418. Savings held by minor. Whenever any *savings accounts* in any building and loan association shall be purchased by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the *savings accounts* shall have been purchased, and the receipt of such minor shall be sufficient release or discharge for such *savings accounts* to the association."

Section 21. Section 32-2-431, MCA, is amended to read:

"32-2-431. Voluntary liquidation and settlement. (1) With the consent of the department, an association organized under the laws of and doing business in this state, may, if the *members or* stockholders consider it advisable, go into liquidation. For the purpose of so doing it may, at any regular or called meeting of the *members or* stockholders, adopt a resolution declaring that the association intends to go into liquidation and discontinue business as a building and loan association. A copy of the resolution, duly certified by the president and secretary of the association, under the seal thereof, shall be transmitted to the department within 10

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days after its passage. The department shall then issue its certificate reciting that the resolution has been filed in its office and that the association is in liquidation.

(2) After the filing of the notice, it is unlawful for the association to issue stock or to loan or advance its money to members, *shareholders,* or to any other person.

(3) All of the income and receipts of the association in excess of the actual expense of managing it shall be applied to pay off first the indebtedness and the *savings accounts* in the association upon which no loans have been made, the same to be paid pro rata, *then to pay off the capital stock in the association, pro rata.*

(4) The board of directors of the association in liquidation may adopt those rules and make those orders which are just and equitable for the sale and disposition of all property held by the association and for the division of the assets of the association.

(5) The association in liquidation may be examined by and shall be under the supervision of the department."

Section 22. Section 32-2-432, MCA, is amended to read:

"32-2-432. Reorganization of associations under liquidation. Any association under voluntary liquidation as provided in 32-2-431 or which may be under the possession of the department as specified in 32-2-309 may resume business as an active building and loan association in the following manner:

(1) The directors of such building and loan association, by and with the approval of the department, may, upon such terms as may be agreed upon and ratified by the members *or stockholders* of such association, reorganize such association and resume business as an active building and loan association.

(2) Ratification by members *or stockholders* thereof shall be expressed at a regular or special meeting of members duly called for that purpose, at which meeting a majority of the outstanding stock *in a capital stock association or withdrawable deposits in a mutual association* voting, either in person or by proxy, shall be sufficient to adopt such proposal.

(3) Notice of such meeting shall clearly indicate the purpose of the meeting."

Section 23. Section 32-2-441, MCA, is amended to read:

"32-2-441. Conversion into federal savings and loan associations. Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders *or members* of any such association or at any special meeting of the shareholders *or members* of such association, in either case called to consider such action and held in

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accordance with the laws governing such association, such shareholders *or members*, by an affirmative vote of the majority of the shareholders *or members*, in person or by proxy, may declare by resolution the determination to convert the association into a federal savings and loan association.

(2) A copy of the minutes of the meeting of the shareholders *or members* verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed with the department within 10 days after the meeting. The verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders *or members*, such association shall take any action necessary to make it a federal savings and loan association, and within 10 days after receipt of the federal charter there shall be filed with the department a copy of the charter issued to such association by the federal home loan bank board or a certificate showing the organization of such association as a federal savings and loan association certified by or on behalf of the federal home loan bank board. Upon the filing of such instrument such association shall cease to be a state association and shall thereafter be a federal savings and loan association."

Section 24. Section 32-2-501, MCA, is amended to read:

"32-2-501. Associations empowered to make loans on securities authorized by National Housing Act. Subject to such regulations as may be prescribed by the federal housing administrator, pursuant to an act of congress cited as the "National Housing Act", approved by the president on June 27, 1934, and all amendments thereto as well as any amendments hereafter duly passed and approved, building and loan associations qualified to do business in this state are hereby empowered to make such loans, secured by mortgages upon real estate, and other advances of credit to members or others, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and *members'* accounts, and other contracts as are now, or may hereafter be, authorized or provided for by said National Housing Act and any amendments thereof duly passed and approved."

Section 25. Section 32-2-502, MCA, is amended to read:

"32-2-502. Transactions exempt from operation of state laws. All loans, charges, investments, advances of credit, purchases, sales, contracts for insurance of mortgages and *members'* accounts, and other contracts made pursuant to the powers granted in 32-2-501 through 32-2-503 shall be exempt from the operation and application of the general statutes of this state in conflict with said National Housing Act and the regulations issued thereunder."

Section 26. Section 32-2-503, MCA, is amended to read:

"32-2-503. Application of sections. The provisions of 32-2-501 through 32-2-503 shall apply only to loans, advances of credit, charges, investments, purchases, sales, contracts for insurance of mortgages and advances of credit and accounts of *members*, and other contracts made in

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connection with and incidental to loans secured by mortgages and to advances of credit, insured or to be insured, and accounts, insured or to be insured, under the provisions of said National Housing Act and amendments thereof duly passed and approved."

Section 27. **Organization of mutual associations.** The incorporators of a mutual association shall appoint one of their number as chairman of the incorporators, and he shall procure from a surety company or other surety acceptable to the department a surety bond in an amount no less than the sum of the amount subscribed by the incorporators and the amount of the expense fund described in [section 28]. The bond shall name the department as obligee and shall be delivered to it. The bond shall assure the safekeeping of the funds described and their delivery to the association after the issuance of a certificate of incorporation and after bonding of the officers of the corporation. In the event of failure to complete organization, the bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the expense fund. The incorporators, before a certificate of incorporation is issued, shall pay to the chairman in cash, labor, or services actually performed an aggregate amount of at least $500,000, including that part of the original subscription paid by the chairman, as subscriptions to the savings accounts of the proposed association.

Section 28. **Expense fund for mutual association.** (1) In addition to their subscriptions to savings accounts, the incorporators shall create an expense fund of not less than one-half of the minimum amount of savings account subscriptions required to be paid in under this chapter. The expense fund shall be used to pay the expenses of organizing the association, and its operating expenses may be paid from the fund until such time as its net income is sufficient to pay such earnings as may be declared and paid or credited to its savings account holders from sources available for payment of earnings. Before a certificate of incorporation is issued, the incorporators shall deposit to the credit of the chairman of the incorporators the amount of the expense fund, in cash. The amounts contributed to the expense fund by the incorporators shall not constitute a liability of the association except as otherwise provided.

(2) Contributions made by the incorporators and others to the expense fund may be repaid pro rata from the net income of the association after provision for statutory reserves and declaration of earnings of not less than 2% on savings accounts. If the association is liquidated before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended shall be repaid to the contributors pro rata, after the payment of the expenses of liquidation, creditors, and withdrawal value of all savings accounts. The books of the association shall reflect the expense fund. The contributors to the expense fund shall be paid earnings on the amounts paid in by them at the times earnings are regularly distributed to savings account holders; and for this purpose, the contributions shall in all respects be considered as savings accounts of the association.

Section 29. **Organizational meeting.** Within 30 days after the corporate existence of an association begins, the directors of the association

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shall hold an organizational meeting and shall elect officers pursuant to the provisions of this chapter and the bylaws. At the organizational meeting the directors shall take such other action as is appropriate in connection with beginning the transaction of business by the association. The department may extend, by order, the time within which the organizational meeting must be held.

Section 30. **Organization of capital stock associations.** The incorporators of a capital stock association shall appoint one of their number as chairman of the incorporators, and the chairman shall procure from a surety company or other surety acceptable to the department a surety bond in an amount at least equal to the sum of the amount of capital stock contributions and the additional amounts described in [section 31]. The bond shall name the department as obligee and shall be delivered to it. The bond shall assure the safekeeping of the funds described and their delivery to the association after the issuance of the certificate of incorporation and the bonding of the officers. In the event of the failure to complete organization, the bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the paid-in surplus. Before a certificate of incorporation is issued, the subscribers shall pay to the chairman, in cash, labor, or services actually performed, the capital of such association. The capital shall be the sum of the par or initially stated value of all shares of voting capital stock. Each share of capital stock shall entitle the holder of the share to one vote. The minimum required capital is $500,000.

Section 31. **Capital stock association — surplus fund — verification statement.** (1) In addition to the minimum capital required, the subscribers shall pay an amount equal to not less than 25% of the par or initially stated value of the stock subscribed, which shall be credited to paid-in surplus and may be used to offset losses. The minimum capital and surplus may be used for the reserves required by law and as may be permitted by the board of directors.

(2) Prior to the issuance of a certificate by the department, the incorporators of a proposed association shall file with the department a statement in the form and containing supporting data and proof as the department may require. The statement shall verify that the entire capital and paid-in surplus has been unconditionally paid in and that the funds representing the capital and paid-in surplus, less amounts of the paid-in surplus expended for land, building, supplies, fixtures, equipment, and organization, are on hand.

Section 32. **Issuance of capital stock.** (1) As of the date the corporate existence of a capital stock association begins, the association shall issue such capital stock as necessary to satisfy the minimum capital requirements of [section 30] and such additional capital stock as may be approved for issuance by the board of directors up to the amount authorized in the certificate of incorporation. Once the amount of stock authorized in the certificate of incorporation has been issued, no other shares may be issued except as otherwise authorized in this chapter. The capital stock of an association, when issued, shall constitute permanent capital and may not be retired or withdrawn, except as otherwise provided, until

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all liabilities of the association, including the withdrawal value of all savings accounts, have been satisfied in full and until outstanding capital certificates have been retired.

(2) An association may issue shares of common stock and preferred stock, with or without par value, and such common and preferred stock may be divided into classes and the classes into series.

Section 33. **Restrictions on capital stock.** (1) The consideration for the issuance of capital stock shall be paid in cash except for stock issued pursuant to:

(a) the incorporation of the association;

(b) an employee stock option plan;

(c) a plan of merger, consolidation, or conversion from a mutual to a stock association; or

(d) any other type of reorganization that has been approved by the department.

(2) The par value or stated value of stock issued pursuant to subsections (1)(a) through (1)(d) shall be maintained as the permanent capital of the association, and any additional amount paid in shall be credited to paid-in surplus.

(3) The aggregate par value or stated value of all outstanding shares of capital stock shall be the permanent capital of the association, and except as otherwise provided by this chapter, such capital stock may not be retired until final liquidation of the association. An association may not reduce the par or stated value of its outstanding capital stock without first obtaining the written approval of the department. The department shall withhold its approval if the reduction will cause the par or stated value of outstanding capital stock to be less than the minimum required by this chapter or will result in less than adequate net worth, as the department in its discretion may determine. An association may not retire any part of its capital stock without the approval of the department.

Section 34. **Purchase of stock of deceased stockholder.** An association may purchase its capital stock from the personal representative of a deceased stockholder upon the written approval of the department. Upon obtaining written approval, an association may contract with a living stockholder for a purchase of his stock upon his death. Any such purchase shall be for a price and upon such terms and conditions as may be agreed upon by the association and the stockholder or personal representative. The purchase of a deceased stockholder's stock may not reduce the net worth accounts of the association to an amount less than required by law or by any approved insurer of the association's savings accounts. An association agreeing with a stockholder to purchase his capital stock upon his death may purchase insurance on the life of the stockholder to fund or partially fund such purchase. Any stock purchased under this section may be resold by the association at a price and upon such terms and conditions as the board of directors may approve, or may be retired. If the stock is to be resold, the association shall file notice with the department disclosing the price, terms, and conditions of the proposed resale.

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Section 35. **Mutual and capital stock conversions.** (1) Any mutual association may convert to a capital stock association and any capital stock association may convert to a mutual association in accordance with the provisions of [sections 35 through 41].

(2) Any applicant seeking to convert its corporate form pursuant to [sections 35 through 41] shall first obtain approval of a plan of conversion by a resolution adopted by a two-thirds majority vote of the total number of directors authorized for the association.

Section 36. **Department approval.** (1) Upon approval of a plan of conversion by the board of directors, the plan and the resolution approving it shall be submitted to the department. The department shall approve the plan of conversion after appropriate examination, if it finds that:

(a) the plan of conversion is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and public are adequately protected; and

(c) the converting applicant has complied with the provisions of [sections 35 through 41].

(2) If the department approves the plan of conversion, the approval, which shall be in writing, shall be sent to the home office of the applicant. To cause the applicant to conform with the requirements of this chapter, the approval may prescribe terms and conditions, to be fulfilled either before or after the conversion.

(3) If the department disapproves the plan of conversion, its objections shall be sent in writing to the home office of the applicant. The applicant shall be afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. If the department disapproves the resubmitted plan, written notice of the final disapproval shall be sent by certified mail to the applicant's home office.

Section 37. **Submission to members or stockholders.** (1) If the department has approved a plan of conversion pursuant to [section 36], the plan shall be submitted for adoption to the members or stockholders of the association for a vote at a meeting called for that purpose. The plan must be approved by:

(a) members of a mutual association representing two-thirds of the withdrawable deposits, present in person or by proxy at the meeting; or

(b) stockholders of a capital stock association holding two-thirds of the capital stock, represented in person or by proxy at the meeting.

(2) If the plan is approved, action shall be taken to amend the articles of incorporation and bylaws as necessary, elect directors and officers, and take any other action as is required or appropriate for the type of association into which the applicant will be converted. A certified report of the proceedings shall be filed promptly with the department.

Section 38. **Conversion of mutual to capital stock association.** The following requirements are mandatory in any plan of conversion from the mutual form to a capital stock form of organization:

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(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

(2) The plan shall specify the aggregate dollar amount of voting capital stock and the total number of shares to be issued to accomplish the conversion. The distribution of the stock shall be in accordance with subsection (3).

(3) All voting capital stock issued by the association to accomplish a conversion shall be subscribed and fully paid for in cash, labor, or services actually performed in the conversion process and may not be eligible, either directly or indirectly, as security for a loan or other credit advance to facilitate its own purchase. Each account holder must have the right for a period of 60 days to purchase a proportionate share of the stock at a price equal to the initial stated value thereof. Any stock remaining unsubscribed shall, during the succeeding 60-day period, be offered for sale to those savings account holders of record who have purchased their proportionate share during the initial period. Any stock remaining unsubscribed may be offered for sale to others or transferred to others in consideration for labor or services actually performed in the conversion process.

(4) The record date for determining savings account holders' rights to distribution under subsection (3) shall be set by the converting association's board of directors but may not be less than 120 days prior to the date of approval of the conversion plan by the directors.

(5) The conversion plan shall make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts are to be disposed of or retained.

(6) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of [sections 35 through 41].

Section 39. **Conversion of capital stock to mutual association.** The following requirements are mandatory in any plan of conversion from the capital stock form to a mutual form of association:

(1) Each savings account holder shall receive a withdrawable account of the same general class in the converted association equal in amount and time tenure to his withdrawable account in the converting association. No payment may be required from the account holder for this change of accounts.

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(2) The conversion plan shall specify how and in what amount the return of capital to each class of stockholder in the form of an exchange of stock for savings accounts shall be effectuated.

(3) The plan shall provide for the allocation of voting rights to the holders of savings accounts and the manner in which such rights may be exercised.

(4) The plan shall make specific provision with respect to the surplus, reserves, undivided profits, and capital stock of the converted association, specifying types of accounts, amounts, priorities, any voting rights, and how such accounts shall be disposed of or retained.

(5) The plan shall contain such other information and be in the form required by the department to enable it to make a determination of whether:

(a) the plan is fair and equitable;

(b) the interests of the applicant, members or stockholders, savings account holders, and the public are adequately protected; and

(c) the converting applicant has complied with the requirements of [sections 35 through 41].

Section 40. **Issuance of certificate — continuance of entity.** (1) If the department determines that a conversion proceeding has been completed in accordance with the requirements of [sections 35 through 41], it shall issue to the applicant a certificate of conversion. The conversion does not become effective until the issuance of the certificate.

(2) Upon the issuance to the applicant of a certificate of conversion, the corporate existence of the converting applicant does not terminate but shall be treated as a continuation of the entity so converted. All property of the converted applicant, of whatever kind, and any benefit pertaining to it vest in the converted applicant without any further action, to the same extent as possessed by the converting applicant.

Section 41. **Continuance of rights and obligations.** A converted applicant, upon issuance of the certificate of conversion, continues to have and succeeds to all the rights, obligations, and relations of the converting applicant. All pending actions and other judicial proceedings to which the converting applicant was a party may not be abated or discontinued by reason of the conversion and may be prosecuted to final judgment, order, or decree in the same manner as if the conversion had not been made, and the converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree that might have been rendered for or against the converted applicant prior to the conversion may be rendered for or against it after the conversion.

Section 42. **Codification instruction.** Sections 27 through 41 are intended to be codified as an integral part of Title 32, chapter 2, and the provisions of Title 32, chapter 2, apply to sections 27 through 41.

Section 43. **Effective date.** This act is effective on passage and approval.

Approved January 28, 1983.

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CHAPTER NO. 6

AN ACT TO MAKE RETROACTIVE AS WELL AS PROSPECTIVE THE PRESUMPTION THAT A REFERENCE TO A PROVISION OF THE MONTANA CODE ANNOTATED IS A REFERENCE TO THAT PROVISION AS IT MAY BE AMENDED OR CHANGED FROM TIME TO TIME; AMENDING SECTION 1-2-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-2-108, MCA, is amended to read:

"1-2-108. Reference to other titles, chapters, parts, or sections — subsequent amendments. (1) A statute which refers to a title, chapter, part, section, or subsection number without further identification or attribution is presumed, unless the context clearly indicates otherwise, to refer to a title, chapter, part, section, or subsection of the Montana Code Annotated.

(2) A specific or *implied* reference to a title, chapter, part, section, or subsection of the Montana Code Annotated is presumed to be a reference to that title, chapter, part, section, or subsection as it may be amended or changed from time to time. This presumption may be overcome only by a clear showing that a subsequent amendment or change in the title, chapter, part, section, or subsection is inconsistent with the continued purpose or meaning of the section referring to it.

(3) The presumption contained in subsection (2) applies retroactively as well as prospectively to any reference to a title, chapter, part, section, or subsection of the Montana Code Annotated, regardless of when the reference was created."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 1, 1983.

CHAPTER NO. 7

AN ACT PROVIDING THAT THE TRAINING COORDINATOR FOR COUNTY ATTORNEYS MAY ACT AS SPECIAL COUNSEL TO A COUNTY; REQUIRING THE COUNTY TO PAY FOR THESE SPECIAL COUNSEL SERVICES; AMENDING SECTION 44-4-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-4-103, MCA, is amended to read:

"44-4-103. Functions. The training coordinator shall perform the functions assigned by the attorney general. The functions may include but are not limited to the following:

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(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function; *and*

(6) as provided in [section 2], acting as special counsel."

Section 2. **Request for special counsel services.** (1) Except as provided in subsection (2), the training coordinator may act as special counsel upon request of the county attorney with the approval of the governing body of a county.

(2) If a case involves the prosecution of a member of the governing body of a county or a person related to him by consanguinity within the fourth degree or affinity within the second degree, the coordinator may, with the consent of the attorney general, act as special counsel upon request of the county attorney without approval of the governing body of the county.

Section 3. **County payment for special counsel services.** Whenever the training coordinator acts as special counsel as provided in [section 2], the department of justice shall charge the county a reasonable hourly fee for the training coordinator's services. Upon receipt of payment for these services, the department shall deposit these funds into the state general fund.

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as integral parts of Title 44, chapter 4, part 1, and the provisions of Title 44, chapter 4, part 1, apply to sections 2 and 3.

Approved February 3, 1983.

CHAPTER NO. 8

AN ACT TO ALLOW THE TESTIMONY OF INCEST VICTIMS AND VICTIMS OF DEVIATE SEXUAL CONDUCT TO BE VIDEOTAPED FOR EVIDENTIARY PURPOSES IN THE SAME MANNER AS THE LAW NOW PROVIDES FOR THE VIDEOTAPING OF VICTIMS OF OTHER SEXUAL CRIMES; AMENDING SECTION 46-15-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-15-401, MCA, is amended to read:

"46-15-401. When videotaped testimony admissible. For any prosecution commenced under 45-5-502(3), 45-5-503, *45-5-505, or 45-5-613,*

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the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence."

Approved February 3, 1983.

CHAPTER NO. 9

AN ACT REMOVING THE PROVISION MAKING THE ELIMINATION OF USURY LIMITS AS APPLIED TO REGULATED LENDERS TEMPORARY; AMENDING SECTION 8, CHAPTER 275, LAWS OF 1981; REPEALING SECTION 32-1-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8, Chapter 275, Laws of 1981, is amended to read:

"Section 8. Effective date. This act is effective on passage and approval."

Section 2. **Repealer.** Section 32-1-436, MCA, is repealed.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 3, 1983.

CHAPTER NO. 10

AN ACT TO ESTABLISH A FILING FEE TO BE PAID TO THE CLERK OF THE DISTRICT COURT FOR THE FILING OF CERTAIN ITEMS BY A DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE OF THE ESTATE OF A NONRESIDENT DECEDENT; AMENDING SECTION 25-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, $20; and for filing a complaint in intervention, from the intervenor, $20;

(b) from each defendant or respondent, on his appearance, $10;

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(c) on the entry of judgment, from the prevailing party, $10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, $2;

(k) for transmission of records or files or transfer of a case to another court, $5;

(l) for filing and entering papers received by transfer from other courts, $10;

(m) for issuing a marriage license, $30;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for filing a will for probate;

(o) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent. $35.

(2) Except as provided in subsection (3), 40% of all fees collected by the clerk of the district court shall be deposited in and credited to the general fund of the county. The remaining portion of the fees shall be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404."

Approved February 3, 1983.

CHAPTER NO. 11

AN ACT TO ALLOW POLITICAL SUBDIVISIONS OF THE STATE TO CONTINUE TO SET THE INTEREST RATES FOR BONDS BY CHANGING OR REPEALING TERMINATION PROVISIONS OF CHAPTER 500, LAWS OF 1981; AMENDING SECTION 21, CHAPTER 500, LAWS OF 1981; REPEALING SECTION 20, CHAPTER 500, LAWS OF 1981, AND SECTIONS 7-7-2208 AND 7-7-4207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 21, Chapter 500, Laws of 1981, is amended to read:

"Section 21. Effective date. This act is effective on passage and approval."

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Section 2. **Repealer.** Section 20, Chapter 500, Laws of 1981, and sections 7-7-2208 and 7-7-4207, MCA, are repealed.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 4, 1983.

CHAPTER NO. 12

AN ACT TO ESTABLISH A FEE FOR DECLARATION OF MARRIAGE WITHOUT SOLEMNIZATION, ALLOCATING IT IN THE SAME MANNER AS A MARRIAGE LICENSE FEE; AMENDING SECTIONS 25-1-201, 40-2-405, AND 40-1-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, $20; and for filing a complaint in intervention, from the intervenor, $20;

(b) from each defendant or respondent, on his appearance, $10;

(c) on the entry of judgment, from the prevailing party, $10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, $2;

(k) for transmission of records or files or transfer of a case to another court, $5;

(l) for filing and entering papers received by transfer from other courts, $10;

(m) for issuing a marriage license, $30;

(n) for filing a declaration of marriage without solemnization, $30;

(o) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for filing a will for probate.

(2) Except as provided in subsection (3), 40% of all fees collected by the clerk of the district court shall be deposited in and credited to the general fund of the county. The remaining portion of the fees shall be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license *or filing a declaration of marriage without solemnization*, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404."

Section 2. Section 40-1-311, MCA, is amended to read:

"40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the medical certificate required by this chapter, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is $30 and shall be paid to the clerk at time of filing."

Section 3. Section 40-2-405, MCA, is amended to read:

"40-2-405. Funding. (1) Revenue from the marriage license fee *and the fee collected for filing a declaration of marriage without solemnization* is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions."

Approved February 4, 1983.

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CHAPTER NO. 13

AN ACT PERMITTING WAGES COVERED BY THE FEDERAL TARGETED JOBS CREDIT OR WORK INCENTIVE PROGRAM CREDIT AS DEDUCTIONS FOR MONTANA INCOME TAX; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(d) all benefits, not in excess of $360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(e) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(f) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(g) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(h) all Montana income tax refunds or credits thereof;

(i) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(j) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9;

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(k) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii).

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1982.

Approved February 4, 1983.

CHAPTER NO. 14

AN ACT TO PROVIDE FOR THE ASSESSMENT OF INTEREST ON DEFICIENCY ASSESSMENTS AND INTEREST CREDIT ON OVERPAYMENTS FOR THE COAL SEVERANCE TAX, OIL AND GAS SEVERANCE TAX, MINING LICENSE TAXES, RESOURCE INDEMNITY TRUST TAX, ELECTRIC ENERGY PRODUCERS' LICENSE TAX, TELEPHONE COMPANY LICENSE TAX, COAL RETAILER'S LICENSE TAX, AND CEMENT TAXES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Deficiency assessment — hearing — interest.** (1) When the department of revenue determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within 30

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days after mailing of the notice, the taxpayer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the 30-day period. If a protest is filed, the department must reconsider the proposed assessment and, if the taxpayer has so requested, must grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented at any oral hearing, the department's action upon the protest is final when it mails notice of its action to the taxpayer.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the taxpayer. The tax is due and payable at the expiration of 10 days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return.

Section 2. **Credit for overpayment — interest on overpayment.** (1) If the department of revenue determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as hereinafter provided for, interest shall be allowed on overpayments at the same rate as is charged on deficiency assessments provided in [section 1] due from the due date of the return or from the date of overpayment (whichever date is later) to the date the department approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. No interest shall be allowed:

(a) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

(3) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law shall not be considered an overpayment with respect to which interest is allowable.

Section 3. **Codification instruction.** Sections 1 and 2 are intended to be codified as integral parts of Title 15, chapters 35, 36, 37 (parts 1 and 2), 38, 51, 53, 58, and 59 (parts 1 and 2), and the provisions of Title 15, chapters 35, 36, 37 (parts 1 and 2), 38, 51, 53, 58, and 59 (parts 1 and 2), apply to sections 1 and 2.

Approved February 4, 1983.

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CHAPTER NO. 15

AN ACT ALLOWING THE DRIVER OF AN OVERTAKEN VEHICLE TO TRAVEL ON THE SHOULDER OF A TWO-LANE HIGHWAY UNTIL HE IS PASSED IF IT IS SAFE TO DO SO; AMENDING SECTIONS 61-8-311 AND 61-8-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-311, MCA, is amended to read:

"61-8-311. Minimum speed regulations. (1) A person may not drive a motor vehicle at a speed slow enough to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, including a passenger vehicle, behind which four or more vehicles are formed in line shall turn off the roadway at the nearest place designated as a turnout by signs erected by the authority having jurisdiction over the highway or wherever sufficient area for a safe turnout exists in order to permit the vehicles following it to proceed. *If the shoulder of the highway to the right of the overtaken vehicle is wide enough and is in a condition allowing safe travel, the driver of the overtaken vehicle may drive onto the shoulder and proceed at a safe speed until passed.* As used in this section a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. The department of highways is authorized to designate and construct such turnouts and to erect signs at appropriate places advising motorists of this statute.

(3) If the department of highways or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may set a minimum speed limit below which a person may not drive a vehicle except when necessary for safe operation or in compliance with law."

Section 2. Section 61-8-323, MCA, is amended to read:

"61-8-323. Overtaking a vehicle on the left. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his

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vehicle until completely passed by the overtaking vehicle. *When giving way to the right on a two-lane highway, he may travel upon the shoulder at a safe speed until passed if the shoulder is wide enough and is in a condition allowing safe travel.*"

Approved February 4, 1983.

CHAPTER NO. 16

AN ACT TO REMOVE THE REQUIREMENT THAT A TAXPAYER PAY THE COSTS OF AN OUT-OF-STATE MOTOR FUELS AUDIT; AMENDING SECTIONS 15-70-208 AND 15-70-324, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-208, MCA, is amended to read:

"**15-70-208. Examination of records.** (1) The department of revenue or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this part and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all license taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished *at the direction of* the department for review *either in the offices of the department or at the business location of the taxpayer.*

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting, or storing gasoline must be open and subject to inspection by the department or any of its employees or assistants during business hours in order to ascertain the amount of license tax due."

Section 2. Section 15-70-324, MCA, is amended to read:

"**15-70-324. Examination of records.** (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they shall be furnished *at the direction of* the department for review *either in the offices of the department or at the business location of the taxpayer* and shall be, *if requested by the department,* accompanied by the special fuel dealer or special fuel user.

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(3) For the purpose of enforcing the provisions of this part, the fact that a special fuel dealer or a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles shall be prima facie evidence that all of such special fuel has been delivered by the special fuel dealer or special fuel user into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles upon the highways as herein defined unless the contrary shall be established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state."

Approved February 4, 1983.

CHAPTER NO. 17

AN ACT PROVIDING THAT A TRAVEL PERMIT FOR LIVESTOCK OWNED BY A RODEO PRODUCER IS EFFECTIVE FOR A CALENDAR YEAR; AMENDING SECTION 81-3-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

(a) "Members of the same family" means a group whose membership is determined by including an individual, his spouse, and his parents, children, grandchildren, and the spouses of each.

(b) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members all are members of the same family; or

(iv) any other entity owned solely by members of the same family.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or his

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agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when:

(a) such sale or change of ownership transaction involves five or fewer such animals; or

(b) the change of ownership transaction is accomplished without the livestock changing premises, involves part of a herd to which no livestock have been added other than by natural increase or after brand inspection, and is between:

(i) members of the same family;

(ii) a member of one family and the same family's business entity; or

(iii) the same family's business entities.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock have been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this section or where change of ownership has occurred or when moved under a market consignment permit or a market release certificate, shall have in his possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 shall be extended to livestock transported or sold under the above-mentioned permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business or

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where a purebred cow is being transported from county to county in this state by its owner for show purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow is to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a $5 permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer is being transported from county to county in this state by the owner for rodeo purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective *for the calendar* year for which it is issued. The certificate shall be issued by a state stock inspector.

(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an immediately adjoining county and return when the livestock is being moved for grazing purposes and when it is being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for 6 months and must be issued by a state stock inspector. The fee for the permit is $5, which shall be paid to the state stock inspector at the time the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

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(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees."

Approved February 9, 1983.

CHAPTER NO. 18

AN ACT TO CLARIFY THAT THE STATUTORY PROHIBITIONS ON DRIVING ANIMALS INCLUDE MOVING THE ANIMALS BY WHATEVER MEANS; AMENDING SECTION 81-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-5-101, MCA, is amended to read:

"81-5-101. Moving cattle from customary range forbidden. Every person who willfully *moves* or causes to be *moved* any cattle, horses, mules, or sheep from their customary range without the permission of the owner thereof is punishable by imprisonment in the county jail not exceeding 90 days or by fine not exceeding $100, or both."

Approved February 9, 1983.

CHAPTER NO. 19

AN ACT TO ALLOW COUNTIES TO APPROPRIATE FEDERAL OR STATE FUNDS TO COUNTY UTILITY DISTRICTS AND FIRE SERVICES BUT REQUIRING THAT THE APPROPRIATION MUST BE REPAID TO THE COUNTY WITHIN 5 YEARS IF COUNTY-WIDE SERVICES ARE NOT PROVIDED BY THE RECIPIENT; AMENDING SECTION 7-6-2218, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2218, MCA, is amended to read:

"7-6-2218. Appropriation of state and federal money by county. (1) The board of county commissioners of any county in Montana shall have the power and authority to appropriate, by formal resolution, money received from the federal or state government, regardless of the time the money is received. The expenditure of said funds shall be according to federal requirements specified in the federal act or state requirements specified in the state legislation. The money appropriated under this section may include federal revenue sharing funds granted to Montana conservation districts organized under Title 76, chapter 15.

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(2) The resolution shall state the source of the money, the expenditure program for the funds, and the effective date of the appropriation.

(3) (a) Subject to restrictions in federal or state law granting federal or state funds, in addition to appropriations for county use, an appropriation may be made under this section to the following entities for that entity's governmental purpose:

(i) utility districts authorized in Title 7, chapter 13;

(ii) fire services authorized in Title 7, chapter 33.

(b) If the entity receiving an appropriation under subsection (3)(a) provides a service that is less than countywide, the appropriation resolution shall require that the entity repay the county the amount of the appropriation. The appropriation resolution may provide any method of repayment, except that full repayment must be made within 5 years of the date of the appropriation resolution. The appropriation resolution may require that interest be paid on the appropriation."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 14, 1983.

CHAPTER NO. 20

AN ACT GIVING THE ATTORNEY GENERAL, STATE AUDITOR, SUPERINTENDENT OF PUBLIC INSTRUCTION, AND SECRETARY OF STATE THE POWERS ACCORDED APPOINTED DEPARTMENT HEADS AND EXEMPTING SUCH ELECTED OFFICIALS FROM THE GUBERNATORIAL PERMISSION OR APPROVAL REQUIREMENTS AND DUTIES REQUIRED OF DEPARTMENT HEADS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Attorney general, state auditor, superintendent of public instruction, and secretary of state — powers as department heads.** The attorney general, state auditor, superintendent of public instruction, and secretary of state have, in addition to any other power vested by the Montana constitution or by law, the same powers accorded the heads of departments by Title 2, chapter 15, part 1. No duties relating to the governor or requirements for permission from or approval by the governor in Title 2, chapter 15, part 1, apply to such elected officials in the exercise of such power unless a statute specifically requires the elected official to perform such duty or obtain such permission or approval.

Approved February 14, 1983.

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CHAPTER NO. 21

AN ACT AMENDING SECTIONS 2-16-301 AND 2-16-302, MCA, TO ABOLISH THE REQUIREMENTS THAT CLERKS AND SUBORDINATES OF PUBLIC OFFICERS BE APPOINTED IN WRITING AND TAKE AN OATH OF OFFICE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-301, MCA, is amended to read:

"2-16-301. Appointment of deputies and subordinate officers — number. (1) All assistants, deputies, and other subordinate officers whose appointments are not otherwise provided for must be appointed by the officer or body to whom they are respectively subordinate.

(2) When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

(3) The appointment of deputies not otherwise provided for must be made in writing filed in the office of the appointing power or the office of its clerk."

Section 2. Section 2-16-302, MCA, is amended to read:

"2-16-302. Oath of deputies. Deputies must within 10 days after receiving notice of their appointment take and file an oath in the manner required of their principals."

Approved February 14, 1983.

CHAPTER NO. 22

AN ACT REMOVING THE PROVISION MAKING THE ELIMINATION OF USURY LIMITS UNDER THE MONTANA RETAIL INSTALLMENT SALES ACT TEMPORARY; PROVIDING ALTERNATIVE METHODS FOR COMPUTING THE FINANCE CHARGE; PROVIDING FOR A MINIMUM FINANCE CHARGE; AMENDING SECTION 5, CHAPTER 276, LAWS OF 1981, AND SECTION 31-1-241, MCA; REPEALING SECTION 2, CHAPTER 276, LAWS OF 1981; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5, Chapter 276, Laws of 1981, is amended to read:

"Section 5. Effective date. This act is effective on passage and approval."

Section 2. **Repealer.** Section 2, Chapter 276, Laws of 1981, is repealed.

Section 3. Section 31-1-241, MCA, is amended to read:

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"**31-1-241. Finance charge limitation.** (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall be at a rate agreed upon by the retail seller and the buyer.

(2) Notwithstanding the provisions of any other law, the finance charge included in a retail charge account agreement shall be at a rate agreed upon by the retail seller and the buyer. The finance charge shall be computed from month to month (which need not be a calendar month) or other regular billing cycle period by using the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle.

(3) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(4) If the retail seller increases his finance charge on a retail charge account agreement, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(5) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(6) If the finance charge determined pursuant to subsection (2) for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for such period."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved February 14, 1983.

CHAPTER NO. 23

AN ACT TO REESTABLISH THE BOARD OF MILK CONTROL UNDER EXISTING STATUTORY AUTHORITY AND RULES; REQUIRING A HEARING BEFORE LICENSE SUSPENSION OR REVOCATION; CREATING A STATEWIDE MARKET AREA; DELETING RATE OF RETURN FROM THE PRICING FORMULA; REPEALING BONDING REQUIREMENTS; AMENDING SECTIONS 2-8-103, 81-23-204, AND 81-23-302 THROUGH 81-23-304, MCA; REPEALING SECTIONS 81-23-205 AND 81-23-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Milk Control and requires a performance evaluation of the board by the Legislative Audit Committee; and

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WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Milk Control be reestablished.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of milk control, created pursuant to 2-15-1802, is reestablished for 6 years pursuant to 2-8-122, with its existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of commerce, created by 2-15-1881;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

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(f) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(g) public service commission, department of public service regulation, created by 69-1-102;

(h) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(i) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

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(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates July 1, 1989: board of milk control, department of commerce, created by 2-15-1802."

Section 3. Section 81-23-204, MCA, is amended to read:

"**81-23-204. Declining, suspending, and revoking licenses — penalties in lieu of suspension or revocation.** (1) The department may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board or department, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the department may suspend or revoke a license.

(2) In place of suspension or revocation of a license, the department may assess a civil penalty not to exceed $500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the department or board. If the person

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against whom a civil penalty is assessed fails to pay the civil penalty immediately, the department shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty shall be construed as civil and not criminal in nature. Any moneys received by the department as a result of collection of civil penalties shall be paid into the earmarked revenue fund as provided by 81-23-403."

Section 4. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk and minimum producer prices only for class II and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

(5) Such specific factors may include but shall not be limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(b) the ability and willingness of consumers to purchase, which shall include among other things per capita disposable income statistics, consumer price indexes, and wholesale price indexes;

(c) the cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States department of agriculture), prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(d) the alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

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(e) the prices of butter, nonfat dry milk, and cheese;

(f) the cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;

(h) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula whereby minimum:

(a) producer prices for milk in classes I, II, and III shall be computed;

(b) wholesale prices for milk in class I shall be computed;

(c) jobber prices for milk in class I shall be computed;

(d) retail prices for milk in class I shall be computed.

(8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in subsection (7). If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades, or uses as the board may deem advisable and shall specify the minimum prices therefor.

(10) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate

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transportation rates which distributors, contract haulers, and others charge producers for both farm-to-plant and interplant transportation of milk. No allowance for transportation of milk between plants may be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest.

(11) All milk purchased by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors have been consulted.

(12) The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas. The board may in its discretion, when it determines the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

(13) Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(14) Upon petition by any producer, producer-distributor, or distributor the board shall hold a hearing to receive and consider evidence regarding the advisability and need for *a* statewide pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed statewide. If the board finds that the evidence adduced at such hearing warrants the establishment of *a* statewide pooling arrangement, the board shall proceed by official order to establish the same; but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

(15) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or statewide pooling arrangements or abandonment thereof.

(16) Rules adopted pursuant to this section shall be enforced and audited for compliance by the milk control division of the department of commerce."

Section 5. Section 81-23-303, MCA, is amended to read:

"81-23-303. Rules of fair trade practices. The department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Those rules shall contain but are not limited to provisions prohibiting the following methods of doing business which are unfair, unlawful, and not in the public interest:

(1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;

(2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

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(3) the extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions;

(4) the purchasing, processing, bottling, packaging, transporting, delivering, or otherwise handling of milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board;

(5) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk which is distributed to any person, including agencies of the federal, state, or local government."

Section 6. Section 81-23-304, MCA, is amended to read:

"81-23-304. Limitation on extension of credit to retailers. A sale or delivery may not be made by a producer-distributor, distributor, or jobber to a retailer, except for cash or payment within 15 days after regular billings, and all producer-distributors, distributors, and jobbers shall bill retailers at least monthly. A producer-distributor, distributor, or jobber may not extend more than 15 days' credit after billing to a retailer. A retailer may not receive delivery of milk without agreement to pay for it in cash within 15 days after regular billing. A correctly dated check which is honored upon presentment is cash within the meaning of this section. An extension or acceptance of credit in violation of this section shall be construed as rendering or receiving financial assistance. The licenses of producer-distributors, distributors, or jobbers involved in violation of this section shall be suspended or revoked as determined by the department *after a hearing pursuant to the Administrative Procedure Act.*"

Section 7. **Repealer.** Sections 81-23-205 and 81-23-301, MCA, are repealed.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved February 14, 1983.

CHAPTER NO. 24

AN ACT AMENDING SECTION 19-12-404, MCA, TO INCREASE THE MAXIMUM AMOUNT THAT MAY BE PAID TO A QUALIFIED CLAIMANT UNDER THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-12-404, MCA, is amended to read:

"19-12-404. Pension benefits. (1) Each person who meets the requirements set forth in 19-12-401 or, in the case of a beneficiary, 19-12-405(1) and who has completed and filed a claim as provided in 19-12-403 is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this section.

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(2) The payments shall be computed each year in the following manner:

(a) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of $1 million, the division shall set aside and pay over to the public employees' retirement system the smaller of the amount in excess of $1 million and an amount equal to 95% of the increase of the balance over the balance at the end of the preceding fiscal year for the payment by the public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing the amount set aside by the number of claimants qualifying to participate in the pension plan at the beginning of such succeeding fiscal year.

(b) The total pension payable to a qualified claimant under this section may not exceed *$200* per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of *$200* per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made.

(c) For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter shall be treated collectively as one claimant.

(3) If the amount set aside is sufficient to pay each qualified claimant at least $20 per month throughout the succeeding fiscal year, the pension shall be paid monthly on or before the last day of each month. If the amount set aside is not sufficient to pay each qualified claimant at least $20 per month, each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before December 15 of that year."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 17, 1983.

CHAPTER NO. 25

AN ACT TO REMOVE THE TERMINATION DATE FOR THE APPLICABILITY OF CLASS FOUR PROPERTY TAXATION TO LAND AND IMPROVEMENTS OWNED BY A NONPROFIT MONTANA CORPORATION AND USED FOR GOLFING PURPOSES; REPEALING SECTION 2, CHAPTER 638, LAWS OF 1979; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 2, Chapter 638, Laws of 1979, is repealed.

Section 2. **Effective date and applicability.** This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, as of January 1, 1983.

Approved February 17, 1983.

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CHAPTER NO. 26

AN ACT TO ALLOW A CITY OR TOWN COUNCIL TO SET THE DATE FOR THE MONTHLY FINANCIAL REPORT OF THE CITY TREASURER OR TOWN CLERK; DELETING THE REQUIREMENT THAT SUCH REPORT BE MADE ON THE FIRST MONDAY OF EACH MONTH; AMENDING SECTIONS 7-6-4105 AND 7-6-4109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4105, MCA, is amended to read:

"7-6-4105. Financial reports and records to be maintained by city treasurer. It shall be the duty of the city treasurer:

(1) to present to the council, *on a date set by the council,* a full and detailed statement of the amounts of money belonging to the city received by him and disbursed by him during the preceding month and the state of each particular fund, which statement must be verified by his oath;

(2) to keep the books and accounts of the city in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor or the council or any member thereof;

(3) to render at any time an account to the council, showing the money on hand and the condition of the treasury;

(4) to annually make out and submit to the city council at its last meeting prior to May 1 a detailed account of all receipts and expenditures during the past fiscal year and to file the same with the clerk;

(5) to keep a separate account of each fund or appropriation and the debits and credits thereof;

(6) to keep a register of all warrants paid, called "The Registry Book", which must show the date, amount, and number and the person to whom and the fund from which the same was paid; and

(7) to deliver and file with the city clerk all vouchers, warrants, or orders paid by him."

Section 2. Section 7-6-4109, MCA, is amended to read:

"7-6-4109. Financial reports and records to be maintained by town clerk. It shall be the duty of the town clerk:

(1) to present to the council, *on a date set by the council,* a full and detailed statement of the amounts of money belonging to the town received by him and disbursed by him during the preceding month and the state of each particular fund, which statement must be verified by his oath;

(2) to keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must

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always be open to the inspection of the mayor or the council or any member thereof;

(3) to render at any time an account to the council, showing the money on hand and the condition of the treasury;

(4) to annually make out and submit to the town council, at its last meeting prior to May 1, a detailed account of all receipts and expenditures during the past fiscal year;

(5) to keep a separate account of each fund or appropriation and the debits and credits thereof;

(6) to keep a register of all warrants paid, which must show the date, amount, and number and the person to whom and the fund from which the same was paid and to enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the town treasury."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 17, 1983.

CHAPTER NO. 27

AN ACT EXEMPTING CAR POOLS FROM REGULATION AS MOTOR CARRIERS; AMENDING SECTION 69-12-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) Except as provided in 69-12-201(1)(f), this chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

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(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances;

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill; *or*

(j) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also on his way to or from his place of employment.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 17, 1983.

CHAPTER NO. 28

AN ACT TO CLARIFY THE DISTINCTION BETWEEN STANDARDS APPLICABLE TO A NEW MOTOR VEHICLE WRECKING FACILITY AND THOSE APPLICABLE TO A MOTOR VEHICLE WRECKING FACILITY EXISTING PRIOR TO JULY 1, 1973; SIMPLIFYING THE DEFINITION OF JUNK VEHICLE; AMENDING SECTIONS 75-10-501, 75-10-503, AND 75-10-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-501, MCA, is amended to read:

"75-10-501. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

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(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled *motor* vehicle, including component parts, which is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(4) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(5) "Motor vehicle wrecking facility" means:

(a) a facility buying, selling, or dealing in four or more vehicles per year, of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle; or

(b) a facility which buys or sells integral secondhand parts or component material thereof, in whole or in part, and deals in secondhand motor vehicle parts. A facility which buys or sells integral secondhand parts or component material of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(6) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(7) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

(8) "Shielding" means the construction or use of fencing or manmade or natural barriers to conceal junk vehicles from public view."

Section 2. Section 75-10-503, MCA, is amended to read:

"75-10-503. Adoption of rules. The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

(1) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(2) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(3) the inspection and evaluation of premises and records subject to or required by this part;

(4) the development of budget and fiscal forms and procedures for counties;

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(5) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(6) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule which requires *any motor vehicle wrecking facility that existed prior to July 1, 1973, and has been continuously utilized thereafter as a motor vehicle wrecking facility to construct* a fence or manmade barrier which would be in excess of 12 feet in height."

Section 3. Section 75-10-504, MCA, is amended to read:

"75-10-504. Shielding — new facility. A motor vehicle wrecking facility or graveyard site *established or proposed on or after July 1, 1973,* may not be approved for use or licensed if the proposed facility cannot be shielded from public view *on the date it is initially established or proposed to the department for licensure.* The prohibition concerning approval of a new motor vehicle wrecking facility *or graveyard* site does not apply to a facility site that *was licensed as such at any time* within the 18 months *immediately preceding the date an application is made for licensure of such site.*"

Section 4. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved February 18, 1983.

CHAPTER NO. 29

AN ACT TO PROVIDE A LATE FEE TO BE CHARGED TO MONTANA ALCOHOLIC BEVERAGE LICENSEES WHO FAIL TO PAY ANNUAL RENEWAL FEES IN A TIMELY MANNER; AUTHORIZING SUSPENSION OR REVOCATION OF ALCOHOLIC BEVERAGE LICENSES IF ANNUAL RENEWAL FEE IS NOT TIMELY PAID; ELIMINATING PROVISIONS THAT ALCOHOLIC BEVERAGE LICENSES EXPIRE JUNE 30 OF EACH YEAR; AMENDING SECTIONS 16-4-204, 16-4-407, AND 16-4-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-204, MCA, is amended to read:

"16-4-204. Contents of license — posting — privilege — catering endorsement — transfer — expiration. (1) Every license issued under this part shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific

description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

(3) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license, and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(4) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(5) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(6) (a) Except as provided in subsection (6)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

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(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than 33% in the most recent census prescribed in 16-4-502; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (6)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons for 5 years following the transfer. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.

(d) Once a license is transferred to a new quota area under subsection (6)(a), it may not be transferred to another quota area or back to the original quota area.

(7) (a) Any all-beverage licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverage license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $40 must be filed with the department at least 10 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverage licensee who holds an endorsement granted under this subsection (7) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences.

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(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(8) Except as above provided, no license shall be transferred or sold nor shall it be used for any place of business not described in the license; provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license."

Section 2. Section 16-4-407, MCA, is amended to read:

"16-4-407. Expiration of licenses. Each July 1, the department shall issue licenses to brewers, wholesalers, or retailers or for the retail sale of alcoholic beverages on an annual basis and at such fees as are prescribed by law, and such licenses *are subject to suspension or revocation under 16-4-406 after* midnight of June 30 of the succeeding year *if the annual renewal fees required by 16-4-501 are not paid.* The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency."

Section 3. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400;

(c) each beer retailer, $200; with a wine license amendment, an additional $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

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(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

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(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(10) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 ⅓% of any license fee delinquent on July 1 of the renewal year, 66 ⅔% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year."

Approved February 18, 1983.

CHAPTER NO. 30

AN ACT EMPOWERING THE HIGHWAY COMMISSION TO ESTABLISH PRIORITIES AND TO SELECT ROADS FOR CONSTRUCTION AND RECONSTRUCTION; AMENDING SECTION 60-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Setting priorities and selecting projects.** The commission shall establish priorities and select and designate segments for construction and reconstruction on federal-aid interstate and federal-aid primary and state highway systems. The commission shall use information gathered or discovered by and documents prepared by the department, and department officials and employees shall provide assistance and advice.

Section 2. Section 60-2-201, MCA, is amended to read:

"**60-2-201. General powers of department.** (1) The department may plan, lay out, alter, construct, reconstruct, improve, repair, and maintain highways on the federal-aid systems and state highways *according to priorities established by and on projects selected and designated by the commission.*

(2) The department may cooperate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets.

(3) The department may review and approve projects for the installation of public works on state highway rights-of-way and authorize a county or municipality to let contracts related to such improvements.

(4) The department shall adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges."

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Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60 apply to section 1.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved February 18, 1983.

CHAPTER NO. 31

AN ACT TO INCREASE THE MAXIMUM ASSESSMENT ALLOWABLE UPON WHEAT AND BARLEY, THE PROCEEDS OF WHICH ARE USED FOR WHEAT RESEARCH AND MARKETING; ELIMINATING DEPARTMENT OF AGRICULTURE POWERS RELATING TO ALCOHOL BYPRODUCTS; AMENDING SECTION 80-11-206, MCA; REPEALING SECTIONS 80-11-221 THROUGH 80-11-223, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-206, MCA, is amended to read:

"80-11-206. Maximum annual assessment on wheat and barley grown. (1) There is hereby levied an annual assessment of *not more than 10* mills per bushel upon all wheat grown and *not more than 15* mills per hundredweight on all barley grown in the state of Montana and sold through commercial channels. The assessment is hereby levied and imposed on each grower of wheat or barley in the state of Montana:

(a) in the case of sale of wheat or barley, at the time of any sale of wheat or barley by a grower, and shall be collected by the first purchaser of the wheat or barley from the grower at the time of each settlement for wheat or barley purchased; or

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program, the assessment shall be collected by deducting the amount thereof from the proceeds of such loan at the time the loan is made by the agency or person making the loan.

(2) The assessment levied under the provisions of this part shall be deducted and collected as provided by this part, whether such wheat or barley is stored in this or any other state. The assessment shall attach to each transaction, but no grower shall be subject to assessment more than once irrespective of the number of times it shall be the subject of a sale, pledge, mortgage, or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage, or other transaction in which the wheat or barley grower parts with title to the wheat or barley, or creates some interest therein in a pledgee, mortgagee, or other person."

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Section 2. **Repealer.** Sections 80-11-221 through 80-11-223, MCA, are repealed.

Section 3. **Effective date.** This act is effective on July 1, 1983.

Approved February 21, 1983.

CHAPTER NO. 32

AN ACT TO MAKE STATUTES PROVIDING FOR PROPERTY DESCRIPTIONS FOR PROPERTY TAX CLASSIFICATION PURPOSES CONSISTENT WITH STATUTES PROVIDING FOR PROPERTY DESCRIPTIONS FOR TAX ASSESSMENT PURPOSES; AMENDING SECTION 15-7-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-103, MCA, is amended to read:

"15-7-103. Classification and appraisal — general and uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103 by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information.

(3) All lands must be classified by *parcels or subdivisions not exceeding one section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.*

(4) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

(5) In any periodic revaluation of taxable property completed under the provisions of 15-7-111 after January 1, 1979, all property classified in [15-6-112] must be appraised on its market value in the same year. The department must publish a rule specifying the year used in the appraisal."

Approved February 21, 1983.

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CHAPTER NO. 33

AN ACT TO AMEND MONTANA'S CODIFICATION OF THE UNIFORM COMMERCIAL CODE TO PROVIDE THAT THERE ARE NO IMPLIED WARRANTIES THAT SEED FOR PLANTING IS DISEASE FREE; AMENDING SECTION 30-2-316, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-2-316, MCA, is amended to read:

"30-2-316. Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (30-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2):

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty;

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade;

(d) in sales of cattle, hogs, sheep, *or* horses, there are no implied warranties, as defined in this chapter, that the cattle, hogs, sheep, or horses are free from sickness or disease; *and*

(e) in sales of any seed for planting (including both botanical and vegetative types of seed, whether certified or not), there are no implied warranties, as defined in this chapter, that the seeds are free from disease, virus, or any kind of pathogenic organisms.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (30-2-718 and 30-2-719)."

Approved February 24, 1983.

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CHAPTER NO. 34

AN ACT AUTHORIZING THE DEPARTMENT OF LIVESTOCK TO RESEARCH LIVESTOCK MARK OR BRAND HISTORIES AND TO CHARGE A FEE; AMENDING SECTION 81-3-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-107, MCA, is amended to read:

"81-3-107. Fees for department. The department shall charge and collect $25 for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand. The department shall charge $2.50 for a certified copy of a record and a duplicate certificate. *The department may upon request research mark or brand histories and may charge a fee of up to $50 per mark or brand, based on time involved in research.* All fees collected shall be paid into the earmarked revenue fund for the use of the department. However, not more than 10% of the net rerecording fees after all expenses of rerecording are paid may be expended in any one year except in case of an emergency declared by the governor."

Approved February 24, 1983.

CHAPTER NO. 35

AN ACT REDUCING THE PERIOD OF TIME IN WHICH A PERSON TAKING POSSESSION OF TRESPASSING LIVESTOCK MUST GIVE NOTICE TO THE OWNER; DELETING A REQUIREMENT THAT NOTICE BE POSTED WHERE THE ANIMAL WAS TAKEN; AMENDING SECTION 81-4-217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-217, MCA, is amended to read:

"81-4-217. Retention of trespassing stock. (1) If an animal breaks into an enclosure surrounded by a legal fence or is wrongfully on the premises of another, the owner or occupant of the enclosure or premises may take into his possession the trespassing animal and keep the animal until all damages, together with reasonable charges for keeping and feeding the animal, are paid. The person who takes the animal into his possession shall, within *24* hours after he takes possession, give written notice to the owner or person in charge of the animal, stating that he has taken the animal. The notice shall also give the date of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the animal, and the description, either by legal subdivisions or other general description, of the location of the premises on which the animal is held.

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(2) The notice shall be given to the owner or person in charge only when the owner or person in charge of the animal is known to the person taking the animal and resides within 25 miles of the premises on which the animal was taken. If the owner or person in charge of the animal resides more than 25 miles from the place of the taking, the notice shall be mailed to him. In this case or if the owner is unknown, a similar notice shall be mailed to the department of livestock and the sheriff of the county in which the animal has been taken. On receipt of the notice, the sheriff shall post a copy of the notice at the courthouse and shall send by certified mail a copy of it to the owner of the stock, if known to him. If unknown to him, the sheriff shall send a copy of the notice to the nearest state livestock inspector.

(3) If the parties within 5 days thereafter do not agree to the amount of damages, the claimant must within 10 days thereafter institute a civil action to collect his claim in a court of competent jurisdiction. Pending the outcome of the suit, the person taking the stock may, at the expense of the owner, retain a sufficient number of animals to cover the amount of damages claimed by him. The defendant may, after the institution of the action, on filing a bond executed by two or more sureties and approved by the court in double the sum sued for, conditioned upon the payment to the plaintiff of all sums, including costs that may be recovered by the plaintiff, have all livestock returned to him. The claimant is liable to the owner for any loss or injury to the stock occurring through his fault or neglect. If the claimant fails to recover in the action a sum equal to that offered him by the owner of the stock, the claimant bears the expense of keeping and feeding the stock while in his possession.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without his consent, is guilty of a misdemeanor and shall be fined not less than $100 or more than $500."

Approved February 24, 1983.

CHAPTER NO. 36

AN ACT PROVIDING FOR THE IMPOSITION OF A PENALTY FOR FAILURE TO FILE WITHHOLDING RETURNS AND FORMS W-2 AS REQUIRED BY STATUTE; AMENDING SECTION 15-30-207, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY CLAUSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-207, MCA, is amended to read:

"15-30-207. Annual statement by employer. *(1)* Every employer shall, on or before February 15 in each year, file with the department a *wage and tax* statement *for each employee* in such form and summarizing such information as the department *requires*, including the total wages paid to *the* employee during the preceding calendar year or any part

thereof and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209.

(2) The annual statement filed by an employer with respect to the wage payments reported *constitutes* full compliance with the requirements of 15-30-301 relating to the duties of information agents, and no additional information return *is* required with respect to such wage payments.

(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of $5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 15 of each year shall be $50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies to annual wage statements for wages paid during or after calendar year 1983.

Approved February 24, 1983.

CHAPTER NO. 37

AN ACT PROVIDING A 3-DAY APPLICATION FILING REQUIREMENT FOR ALL-ALCOHOLIC BEVERAGES LICENSE CATERING ENDORSEMENTS AND BEER AND TABLE WINE SPECIAL PERMITS; REMOVING THE DEPARTMENT OF REVENUE'S INVESTIGATORY DUTIES FOR SUCH ENDORSEMENTS AND PERMITS; REDUCING THE CATERING APPLICATION FEE; AMENDING SECTIONS 16-4-204, 16-4-301, AND 16-4-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-204, MCA, is amended to read:

"16-4-204. Contents of license — posting — privilege — catering endorsement — transfer — expiration. (1) Every license issued under this part shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

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(2) Any license issued under the provisions of this part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

(3) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license, and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(4) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(5) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(6) (a) Except as provided in subsection (6)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than 33% in the most recent census prescribed in 16-4-502; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the

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quota of the all-beverages licenses in the original quota area exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (6)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons for 5 years following the transfer. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.

(d) Once a license is transferred to a new quota area under subsection (6)(a), it may not be transferred to another quota area or back to the original quota area.

(7) (a) Any all-beverage licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverage license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of *$35* must be filed with the department at least *3* days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverage licensee who holds an endorsement granted under this subsection (7) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences *and the local law enforcement agency that has jurisdiction over the premises where the event is to be held.*

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(8) Except as above provided, no license shall be transferred or sold nor shall it be used for any place of business not described in the license;

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provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

(9) All licenses shall expire at midnight of June 30 of each year."

Section 2. Section 16-4-301, MCA, is amended to read:

"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine — application and issuance. (1) (a) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event shall in the discretion of the liquor division be entitled to a special permit to sell beer and table wine to the patrons of such event to be consumed within the enclosure wherein the event is held.

(b) The application of any such association or corporation shall be presented 3 days in advance and shall describe the location of such enclosure where such event is to be held, the nature of the event, and the period when it is contemplated that the event will be held. The application shall be accompanied by the amount of the permit fee *and a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences and the local law enforcement agency that has jurisdiction over the premises where the event is to be held.*

(c) The permit issued to such association or corporation is a special permit but shall not authorize the sale of beer and table wine except starting 1 day in advance of the regular period when events are being held upon such grounds and during the period described in the application and for 1 day thereafter.

(2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization not otherwise licensed under this code shall, in the discretion of the department, without notice or hearing as provided in 16-4-207, be entitled to a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at such post or lodge to members and their guests only, to be consumed within the hall or building of such post or lodge.

(b) The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit will be used and the date it will be used.

(c) The special permit issued shall be for a 24-hour period only ending at 2 a.m., and the department may not issue more than 12 such permits to any such post or lodge during a calendar year."

Section 3. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application — investigation. (1) Prior to the issuance of any license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as may be required by the

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department. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths.

(2) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee, the department shall within 30 days make a thorough investigation of all matters pertaining thereto and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business and whether the requirements of this code and the rules promulgated by the department are met and complied with. *This subsection does not apply to a catering endorsement provided in 16-4-204(7) or a special permit provided in 16-4-301.*

(3) Upon proof that any applicant made a false statement in any part of the application, the application for the license may be denied, and if issued, the license may be revoked."

Approved February 24, 1983.

CHAPTER NO. 38

AN ACT TO PROVIDE THAT THE COMMISSIONER OF STATE LANDS MAY APPOINT AN ARBITRATOR TO ASCERTAIN THE VALUE OF IMPROVEMENTS ON STATE LAND WHEN ANY PARTY REFUSES TO DO SO; TO PERMIT A DECISION BY THE DEPARTMENT OF STATE LANDS ASCERTAINING THE VALUE OF IMPROVEMENTS TO BE APPEALED TO THE DISTRICT COURT; AMENDING SECTION 77-6-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-306, MCA, is amended to read:

"77-6-306. Arbitrators to fix value of improvements. (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. *If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the commissioner, the commissioner may appoint an arbitrator for that party. An arbitrator appointed by the commissioner has the same duties and powers as if appointed by one of the parties.* The value of the improvements shall be ascertained and fixed as this part provides.

(2) The reasonable compensation that the arbitrators may fix *for their services* shall be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements so ascertained and fixed is binding on both parties, however, if either party is dissatisfied with the valuation

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so fixed, he may within 10 days appeal from their decision to the department which shall examine the improvements, and, *except as provided in subsection (4),* its decision shall be final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in such proportion as in its judgment justice may demand.

(4) If either party is dissatisfied with valuation fixed by the department, he may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court of Lewis and Clark County for judicial review of the decision."

Approved February 24, 1983.

CHAPTER NO. 39

AN ACT TO PROVIDE FOR AN ARBITRATION PROCESS WHENEVER A STATE LESSEE AND A PARTY RECEIVING A RIGHT-OF-WAY EASEMENT ARE UNABLE TO AGREE ON THE VALUE OF THE DAMAGES RESULTING FROM SUCH EASEMENT; AMENDING SECTION 77-2-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-107, MCA, is amended to read:

"77-2-107. Involvement of lessee when land subject to prior lease. (1) Whenever any kind of right-of-way easement has been granted under this part and the state land in which it is granted is under lease, the party receiving such grant shall give due and timely notice to the lessee and shall make just settlement with him for any damages resulting to his improvements or crops or leasehold interests.

(2) Upon such settlement being made, the lessee shall open or move any fences that may obstruct the right-of-way over the lands under his lease and otherwise cooperate in the opening of the right-of-way. Proof shall be filed with the board that such settlement has been made before the deed to the easement is issued.

(3) (a) If the lessee and the party receiving the right-of-way easement are unable to agree on the value of the damages resulting from the easement, the value of the damages must be ascertained and fixed by three arbitrators, one of whom must be appointed by the lessee, one by the party receiving the easement, and the third by the two appointed arbitrators.

(b) If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the commissioner, the commissioner may appoint an arbitrator for that party. An arbitrator appointed by the commissioner has the same duties and powers as if appointed by one of the parties.

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(c) The arbitrators may fix reasonable compensation for their services, which must be paid in equal shares by the owner of the easement and the lessee.

(d) The value of the damages as ascertained and fixed by the arbitrators is binding on both parties; however, if either party is dissatisfied with the valuation, he may, within 10 days, appeal from their decision to the department. The department shall examine the easements, and, except as provided in subsection (e), its decision on the appeal is final. The department shall collect the actual cost of the reexamination from the owner of the easement and the lessee in such proportion as, in its judgment, justice may demand.

(e) If either party is dissatisfied with the valuation fixed by the department, he may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court in Lewis and Clark County for judicial review of the decision."

Approved February 24, 1983.

CHAPTER NO. 40

AN ACT DEFINING THE PUBLIC CONSUMPTION OF MILK OR CREAM TO MEAN THE USE OF MILK OR CREAM BY THE PUBLIC FOR ANY PURPOSE; AMENDING SECTION 81-21-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-21-101, MCA, is amended to read:

"81-21-101. Definitions. *As used in this part, the following definitions apply:*

(1) "Fluid milk plant*" means* a place where milk or cream is not produced but is purchased or collected and prepared for distribution to the consumer in liquid form.

(2) "Public consumption" means the use of milk or cream by the public for any purpose."

Approved February 24, 1983.

CHAPTER NO. 41

AN ACT TO REPEAL SECTIONS 53-30-107 THROUGH 53-30-109, MCA, CONCERNING AN INTENSIVE REHABILITATION CENTER FOR ADULT OFFENDERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 53-30-107 through 53-30-109, MCA, are repealed.

Approved February 24, 1983.

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CHAPTER NO. 42

AN ACT TO REMOVE THE COUNTY RESIDENCY REQUIREMENT FOR OBTAINING A MARRIAGE LICENSE; AMENDING SECTION 40-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-201, MCA, is amended to read:

"40-1-201. License application. (1) No Montana resident may be joined in marriage within this state until a license has been obtained for that purpose from *a* clerk of the district court.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, his part of the application may be completed and sworn to or affirmed before the person authorized to accept such applications in the county and state in which he resides."

Approved February 24, 1983.

CHAPTER NO. 43

AN ACT TO REVISE THE PROCEDURE FOR ACQUIRING INFORMATION CONCERNING THE LOCATION OF UNDERGROUND FACILITIES; AMENDING SECTIONS 69-4-503 AND 69-4-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-503, MCA, is amended to read:

"69-4-503. Procedure to secure information. (1) Any person seeking information concerning the location of any underground facility must do so by request *in person,* in writing, *or by telephone.*

(2) The person from whom such information is sought must *record the nature and the date of the request and advise the person seeking the information of the location of any underground facility in writing, if so requested, or by marking the location with stakes or paint or by other clearly identifiable markings. The person providing the information must respond* no later than the end of the normal business hours of the second full business day following the date of receipt of the request, Saturdays, Sundays, and holidays excluded."

Section 2. Section 69-4-504, MCA, is amended to read:

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"69-4-504. Information to be part of architects' and engineers' plans. (1) Architects and engineers designing *projects* requiring *excavation* in or adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information *from the owners of* underground facilities and then make said information a part of the plan by which the contractors operate.

(2) Nothing in this section shall excuse any person from the obligation imposed by 69-4-502(1)."

Approved February 24, 1983.

CHAPTER NO. 44

AN ACT TO PROHIBIT THE ENTRY INTO MONTANA OF DISEASED LIVESTOCK, WITH CERTAIN EXCEPTIONS; AMENDING SECTION 81-2-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-2-703, MCA, is amended to read:

"81-2-703. Documents required for importation — exemptions. (1) Except as provided in subsection (6), no animal, animal semen, or animal biologic may be brought into the state without a permit and also a health certificate.

(2) The department shall issue a permit if no significant danger to the public health will ensue upon importation of the animal into the state. *No permit may be issued for livestock infected with or exposed to brucellosis, tuberculosis, or any other infectious, contagious, or communicable animal disease, except that cattle with a positive reaction to a recognized test for brucellosis may be permitted entry when destined directly for slaughter at a slaughterhouse under United States department of agriculture supervision.*

(3) The department may waive the requirement for a health certificate or a permit as provided in subsection (7).

(4) The requirements of subsection (1) apply regardless of species, breed, sex, class, age, point of origin, place of destination, or purpose of movement.

(5) All required documents must be attached to the waybill or be in possession of the driver of the transporting vehicle or of the person in charge of the animals. When a single permit or health certificate is issued for animals being moved in more than one vehicle, the driver of each vehicle shall have in his possession a copy of the permit and, where applicable, a health certificate.

(6) Animals, animal semen, or animal biologics being moved through the state with no intent to unload or deliver in the state are exempted from this part. In an emergency situation, such transitory cargo may be

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unloaded in compliance with the quarantine rules promulgated by the department.

(7) A waiver of the requirement for a health certificate or a permit shall be based upon evidence that there will be no significant danger to the public health if the exemption is granted."

Approved February 24, 1983.

CHAPTER NO. 45

AN ACT SPECIFYING THE TIME PERIOD DURING WHICH THE BOARD OF PARDONS SHALL INVESTIGATE A PRISONER TO DETERMINE HIS SUITABILITY FOR PAROLE; AMENDING SECTION 46-23-303 [sic], MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-202, MCA, is amended to read:

"46-23-202. Investigation of prisoner by board. (1) Within *the* 2 months *prior to* his *official parole eligibility date*, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of any physical and mental examinations which have been made.

(2) Before ordering the parole of any prisoner the board shall interview him."

Approved February 24, 1983.

CHAPTER NO. 46

AN ACT REQUIRING A JUDGE TO STATE HIS REASONS FOR IMPOSING A SENTENCE; AMENDING SECTION 46-18-102, MCA.

WHEREAS, a defendant and the general public are entitled to know precisely why a judge has imposed a particular sentence; and

WHEREAS, a statement of reasons for imposing a sentence provides valuable information in postconviction proceedings before the Montana Supreme Court and the Sentence Review Division; and

WHEREAS, the Montana Supreme Court has ruled that failure of the trial judge to specify his reasons for a sentence is an abuse of judicial discretion.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-102, MCA, is amended to read:

"46-18-102. Rendering judgment and pronouncing sentence. (1) The judgment shall be rendered in open court.

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(2) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his bail bond.

(3) *(a)* If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record his reasons for imposing the sentence."

Approved February 24, 1983.

CHAPTER NO. 47

AN ACT ELIMINATING THE OFFICIAL SEAL ON LIQUOR PACKAGES; PROHIBITING ANY OPEN LIQUOR CONTAINERS IN A STATE LIQUOR STORE; AMENDING SECTIONS 16-1-303, 16-2-107, AND 16-6-104, MCA; REPEALING SECTIONS 16-2-102 AND 16-3-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-303, MCA, is amended to read:

"16-1-303. Department rules. (1) The department may make such rules not inconsistent with this code as to the department seem necessary for carrying out the provisions of this code and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of the department to make rules in the manner set out in that subsection shall extend to and include the following:

(a) regulating the equipment and management of state stores and warehouses in which liquor or table wine is kept or sold and prescribing the books and records to be kept therein;

(b) prescribing the duties of the employees of the liquor division and regulating their conduct while in the discharge of their duties;

(c) governing the purchase of liquor and the furnishing of liquor to state stores established under this code;

(d) determining the classes, varieties, and brands of liquor and table wine to be kept for sale at any state store;

(e) prescribing, subject to this code, the hours during which state liquor stores shall be kept open for the sale of alcoholic beverages;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor and table wine kept for sale under this code;

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(g) prescribing forms to be used for the purpose of this code or of the rules made thereunder and the terms and conditions in permits and licenses issued and granted under this code;

(h) prescribing the form of records of purchase of liquor and table wine and the reports to be made thereon to the division and providing for inspection of the records so kept;

(i) prescribing the manner of giving and serving notices required by this code or the rules thereunder;

(j) prescribing the fees payable in respect of permits and licenses issued under this code for which no fees are prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules made thereunder;

(k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of a liquor or beer license and the books and records to be kept and the returns to be made by the licensees and providing for the inspection of such licensed premises;

(l) specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;

(m) specifying and regulating the time and periods when and the manner, methods, and means by which vendors and brewers shall deliver liquor under this code and the time and periods when and the manner, methods, and means by which liquor, under this code, may be lawfully conveyed or carried;

(n) governing the conduct, management, and equipment of any premises licensed to sell liquor or beer under this code;

(o) providing for the imposition and collection of taxes and making rules respecting returns, accounting, and payment of the taxes to the department.

(3) Whenever it is provided in this code that any act, matter, or thing may be done if permitted or authorized by the rules or may be done in accordance with the rules or as provided by the rules, the department, subject to the restrictions set out in subsection (1) hereof, shall have the power to make rules respecting such act, matter, or thing."

Section 2. Section 16-2-107, MCA, is amended to read:

"16-2-107. No open liquor container or liquor consumption on premises of state store. No officer, clerk, or *agent* of the department employed in *a* state store shall *allow any liquor container to be opened on the premises of a state store or* allow any liquor to be consumed on the premises of a state store, nor shall any person *open a liquor container or* consume any liquor on such premises."

Section 3. Section 16-6-104, MCA, is amended to read:

"16-6-104. Unlawful alcoholic beverage — seizure — forfeiture. (1) Any investigator or peace officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in

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violation of the provisions of this code may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

(2) Any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

Section 4. **Repealer.** Sections 16-2-102 and 16-3-102, MCA, are repealed.

Approved March 10, 1983.

CHAPTER NO. 48

AN ACT AMENDING SECTIONS 15-24-301, 15-24-1001, AND 15-70-312, MCA, TO PROVIDE THAT THE RESIDENT AND NONRESIDENT AGRICULTURAL HARVESTING EQUIPMENT FEES AND PERMITS ARE VALID FOR THE FULL CALENDAR YEAR IN WHICH ISSUED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through (6), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

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(4) Any motor vehicle not subject to the light vehicle license fee brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of such person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee in lieu of taxation of $35 per machine for *the calendar year in which the fee is collected.* The machines shall be subject to taxation under class eight only if they are sold in Montana.

(6) The provisions of this part do not apply to automobiles and trucks having a rated capacity of three-quarters of a ton or less. These vehicles are subject to the fee provided for in 61-3-532."

Section 2. Section 15-24-1001, MCA, is amended to read:

"15-24-1001. Custom combiner's tax — collection — distribution — not transferable. (1) In lieu of the taxes required by 15-24-301, motor vehicle license fees and gross vehicle weight fees, overwidth and overheight permits, Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state shall pay a fee of $40 per unit. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth and overheight permits, Montana residents engaged in the business of custom combining may pay the annual farm gross vehicle weight fees and a fee of $20 per unit. A unit includes:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks used by the resident in his business of custom combining.

(3) The fee required by this section must be collected by the department of highways. Upon payment of the fee, the department of highways must provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident or

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resident in his business of custom combining in the state, which device is valid for *the calendar year in which the fee is collected.*

(4) All fees collected under this section must be distributed not later than *January 31* immediately following the period of license as follows: 62 ½% to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 ½% to the earmarked revenue fund for the department of highways.

(5) The identifying devices and fee paid for each unit are not transferable from one vehicle to another or transferable on the sale or change of ownership.

(6) Any owner or operator of any equipment included in the unit definition in subsection (1) or (2) of this section who violates any provision of this section is guilty of a misdemeanor and punishable by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail, or both."

Section 3. Section 15-70-312, MCA, is amended to read:

"15-70-312. Fees for temporary permits — duration of temporary permits. (1) The temporary special fuel permits shall cost the special fuel vehicle user a fee of $30. The permit shall be valid for a period of time not to exceed 72 hours and will be automatically void should the vehicle leave the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment shall cost $30 per unit for *the calendar year in which the fee is collected.* The permit shall not be transferable. A unit shall be defined as:

(a) one truck suitable for hauling produce;

(b) one harvesting machine; and

(c) pickup trucks and any other accessory vehicles.

(3) All fees collected shall be remitted to the department or deposited directly in the earmarked revenue fund for the department of highways."

Approved March 10, 1983.

CHAPTER NO. 49

AN ACT DEFINING THE DUTIES OF A VOLUNTEER FIREFIGHTER FOR THE PURPOSE OF DISABILITY PAYMENTS AND EXEMPTING CERTAIN FIRE DISTRICTS FROM AUDITS CONDUCTED BY THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 2-7-503, 19-12-502, AND 19-12-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-503, MCA, is amended to read:

"2-7-503. Audits of local governmental entities. (1) The department shall audit the affairs of all:

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(a) counties;

(b) incorporated cities and towns;

(c) first- and second-class school districts and third-class school districts that maintain a high school;

(d) school district extracurricular fund for pupil functions;

(e) irrigation districts;

(f) conservancy districts;

(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy, *except as provided in subsection (6)*; and

(h) fire department relief associations.

(2) Each audit shall be made every 2 years and shall cover the immediately preceding 2 fiscal years of the governmental entity, unless annual audits are requested by the governmental entity.

(3) Each audit shall be initiated not later than 24 months from the close of the fiscal year for which the audit is conducted.

(4) In addition to the audits required by this section, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this part.

(5) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee herein provided shall be paid by the governmental entity to the state treasurer and deposited in the revolving fund to the credit of the department.

(6) Except as herein provided, the department may not audit a fire district which has an annual budget of less than $20,000 and in which fire protection is provided solely by a fire company composed only of volunteer firefighters organized under Title 7, chapter 33. Such district shall annually file with the board of county commissioners of the county in which the majority of the district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer of the fire company designated by the fire district trustees. The board of county commissioners may require an annual audit to be conducted by the department if it considers such audit to be in the public interest."

Section 2. **Duties of volunteer firefighters.** The duties of a volunteer firefighter include any activity authorized by an officer of the fire company relating to travel to, participation in, and return from calls for fire protection, fire company meetings, training, medical assistance, search and rescue assistance, public service activities, such as parades, and calls for assistance to protect individual or public health and safety.

Section 3. Section 19-12-502, MCA, is amended to read:

"**19-12-502. Procedure for claiming disability benefits.** (1) A firefighter claiming benefits under 19-12-504 must file his claim with the

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division on a form to be provided therefor. The claim must be verified by the claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined. The claim must be filed with the division within 1 year from the date of disability.

(2) The claim must contain:

(a) the name and address of the claimant;

(b) the date, place, and manner of incurring of disability;

(c) the name and address of the attending physician or surgeon and/or nurse, if any;

(d) the dates of confinement, if confined, or if not confined, the dates of attendance by a physician or surgeon and the dates of attendance by a nurse;

(e) the affidavit of the attending physician or surgeon as to the nature of the disability, the number and dates of visits, and the charges;

(f) if confined in a hospital, the affidavit of a person in charge stating the nature of the disability, the dates of confinement, and the expenses incurred while so confined;

(g) the affidavit of the chief or secretary of the fire company stating that the fire company was duly organized under the laws of Montana in an unincorporated town or village, that the claimant was, at the date of disability, an active enrolled member of the company, and that the disability was incurred in the line of duty *as defined in [section 2]*;

(h) the affidavit of the nurse stating the nature of the disability, the dates of attendance, and the charges for services."

Section 4. Section 19-12-504, MCA, is amended to read:

"19-12-504. Disability benefits. (1) Each member of a fire company is entitled to receive compensation for disability incurred while in the performance of his duties as a firefighter, *as defined in [section 2]*, when the disability necessitates the services of a physician or surgeon, whether the member is confined or not. The compensation shall equal the amount of the member's necessary and reasonable medical expenses resulting directly from the disability and incurred within 36 months from the date of the injury which caused the disability. The total compensation may not exceed $25,000.

(2) When an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the division shall order that an artificial member be furnished. The expense of furnishing an artificial member may not exceed $1,500. The artificial member so furnished shall be replaced every 5 years, if necessary."

Section 5. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 19, chapter 12, and the provisions of Title 19, chapter 12 apply to section 2.

Approved March 10, 1983.

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CHAPTER NO. 50

AN ACT CLARIFYING THE LAW RELATING TO THE DETERMINATION OF THE NUMBER OF AVAILABLE RETAIL BEER LICENSES IN A CORPORATE CITY QUOTA AREA; AMENDING SECTION 16-4-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license, which may not be used in conjunction with a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one *retail* beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, *four retail beer licenses for the first 2,000 inhabitants*, two additional retail beer licenses for the *next* 2,000 inhabitants or major fraction thereof, and one additional retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their

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respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured over the shortest public road or highway from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause."

Approved March 10, 1983.

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CHAPTER NO. 51

AN ACT TO PROVIDE AN IRREVOCABLE LETTER OF CREDIT IN LIEU OF THE $20,000 APPLICATION FEE FOR CERTAIN ALL-BEVERAGES LICENSE APPLICATIONS; AMENDING SECTIONS 16-4-402 AND 16-4-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application — investigation. (1) Prior to the issuance of any license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as may be required by the department. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths.

(2) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee *or letter of credit as provided in 16-4-501(7)(f)*, the department shall within 30 days make a thorough investigation of all matters pertaining thereto and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business and whether the requirements of this code and the rules promulgated by the department are met and complied with.

(3) Upon proof that any applicant made a false statement in any part of the application, the application for the license may be denied, and if issued, the license may be revoked."

Section 2. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400;

(c) each beer retailer, $200; with a wine license amendment, an additional $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case be less than $30.

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(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured over the shortest public road or highway from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall *provide an irrevocable letter of credit from a financial institution that guarantees the*

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applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages."

Approved March 10, 1983.

CHAPTER NO. 52

AN ACT TO CLARIFY THE LAWS RELATING TO TRANSFER OF STATE CONTRACTS; AMENDING SECTION 18-4-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-105, MCA, is amended to read:

"18-4-105. Contract transfers and collusion prohibited — violations and penalty. (1) No contract or order or any interest therein may be transferred, *assigned, or subcontracted* by the party to whom the contract or order is given to any other party *without the express written approval of the state*, and the state may declare void any *unapproved* transfer, *assignment, or subcontract. No approval of a transfer, assignment, or subcontract may release the original obligor or his sureties from their obligations to the state under the contract or order.*

(2) Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state in the awarding of contracts is prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section or both void ab initio."

Approved March 10, 1983.

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CHAPTER NO. 53

AN ACT PROVIDING A CONSISTENT EFFECTIVE DATE FOR SERVICE RETIREMENT BENEFITS PAID TO MEMBERS OF THE PUBLIC EMPLOYEES', HIGHWAY PATROLMEN'S, SHERIFFS', GAME WARDENS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; CLARIFYING PROVISIONS CONCERNING THE GAME WARDENS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-3-903, 19-6-501, 19-7-501, 19-8-601, 19-8-604, 19-9-801, AND 19-13-701, MCA; REPEALING SECTION 19-8-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-903, MCA, is amended to read:

"19-3-903. Time of commencement of allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of 19-3-901 or 19-3-902 and filed the appropriate written application. The retirement allowance *must* commence on the first day of the month following the member's last day of membership service."

Section 2. Section 19-6-501, MCA, is amended to read:

"19-6-501. Eligibility and application for service retirement allowance — commencement of allowance. *(1)* A member in service who has completed at least 20 years of creditable service may retire on a service retirement allowance upon written application to the department setting forth at what time he desires to be retired, not less than 30 days or more than 90 days subsequent to the filing thereof.

(2) The retirement allowance must commence on the first day of the month following the member's last day of covered employment."

Section 3. Section 19-7-501, MCA, is amended to read:

"19-7-501. Eligibility and application for service retirement — commencement of allowance. (1) A sheriff in service who has completed at least 25 years of service and who has reached the age of 55 years may retire on a service retirement allowance upon written application to the board, submitted not less than 30 days or more than 90 days from the desired date of retirement.

(2) Retirement is compulsory for any nonelected sheriff at age 65, except in the case of undersheriffs.

(3) The retirement allowance must commence on the first day of the month following the member's last day of membership service."

Section 4. Section 19-8-601, MCA, is amended to read:

"19-8-601. Time of retirement — commencement of allowance. (1) Any member in service who has completed at least 20 years of creditable service and who has reached the age of 55 years may retire on

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service retirement allowance upon written application to the board setting forth at what time, not less than 30 days or more than 90 days subsequent to the filing thereof, he desires to be retired.

(2) Retirement shall be compulsory at age 60.

(3) The retirement allowance must commence on the first day of the month following the member's last day of covered employment."

Section 5. Section 19-8-604, MCA, is amended to read:

"**19-8-604. Involuntary retirement allowance.** If a contributor is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the board, be paid in one of the following ways that he elects:

(1) the full amount of his accumulated deductions; or

(2) a retirement allowance beginning on his 55th birthday calculated under the provisions of *19-8-603.*"

Section 6. Section 19-9-801, MCA, is amended to read:

"**19-9-801. Eligibility for service retirement — commencement of allowance.** Members are eligible for retirement and shall retire as provided in this section:

(1) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank.

(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank.

(3) Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall retire.

(4) The retirement allowance must commence on the first day of the month following the member's last day of membership service."

Section 7. Section 19-13-701, MCA, is amended to read:

"**19-13-701. Eligibility for service retirement — commencement of allowance.** *(1)* The following members are eligible for service retirement:

(a) a member who has reached age 50 and has completed 10 years or more in the aggregate as a firefighter in any capacity or rank;

(b) a member who has reached mandatory retirement age under 19-13-702 regardless of his number of years of service.

(2) The retirement allowance must commence on the first day of the month following the member's last day of membership service."

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Section 8. **Repealer.** Section 19-8-602, MCA, is repealed.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved March 10, 1983.

CHAPTER NO. 54

AN ACT PROVIDING THAT THE CRIME OF RIOT OR INCITEMENT TO RIOT IF OCCURRING IN A STATE ADULT CORRECTIONAL FACILITY AND THE CRIME OF RIOT IN A CITY OR COUNTY JAIL IS A FELONY WITH A TERM OF IMPRISONMENT OF NOT MORE THAN 5 YEARS OR LESS THAN 1 YEAR; AMENDING SECTIONS 45-8-103 AND 45-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-103, MCA, is amended to read:

"**45-8-103. Riot.** (1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) *Except as provided in subsection (3), a* person convicted of the offense of riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of riot by engaging in an act of violence while incarcerated at any state adult correctional facility or city or county jail shall be imprisoned for not less than 1 year or more than 5 years."

Section 2. Section 45-8-104, MCA, is amended to read:

"**45-8-104. Incitement to riot.** (1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas or expression of belief which advocacy or expression does not urge the commission of an act of immediate violence.

(2) *Except as provided in subsection (3), a* person convicted of the offense of incitement to riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

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(3) A person who commits the offense of incitement to riot while incarcerated at any state adult correctional facility shall be imprisoned for not less than 1 year or more than 5 years."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 10, 1983.

CHAPTER NO. 55

AN ACT REVISING THE SMALL TRACT FINANCING ACT OF MONTANA BY INCREASING THE LIMIT ON TRUSTEES' AND ATTORNEYS' FEES AND DELETING UNNECESSARY RECORDING LANGUAGE; AMENDING SECTIONS 71-1-315 AND 71-1-320, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1-315, MCA, is amended to read:

"71-1-315. Notice — sale — payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

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(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be *recorded* in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person."

Section 2. Section 71-1-320, MCA, is amended to read:

"71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed *the lesser of $1,000 or 1% of the amount due on the obligation, both principal and interest at the time of default.* In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure."

Approved March 10, 1983.

CHAPTER NO. 56

AN ACT TO MAKE "MONTANA MELODY" THE OFFICIAL STATE BALLAD.

WHEREAS, in 1945, House Joint Resolution No. 5 adopted the music and lyrics of the song "Montana" as the official state song of the State of Montana; and

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WHEREAS, the song "Montana Melody", written by Carleen and LeGrande Harvey, is representative of the interests and feelings of the children and adults of the state and the philosophy and aims of the state government and adequately captures the essence of Montana, its people, their aspirations, and their love of recreation and the great Montana outdoors; and

WHEREAS, the song "Montana Melody" was written after much thought and research into the meaning of this great state to its people.

THEREFORE, it is the intent of this act that the song "Montana Melody" become the official state ballad.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State ballad.** The song "Montana Melody", written by Carleen Harvey and LeGrande Harvey, is the official state ballad of the state of Montana.

Approved March 11, 1983.

CHAPTER NO. 57

AN ACT CONSOLIDATING THE ADMINISTRATION OF DISABILITY, DEATH, AND PENSION BENEFITS PROVIDED IN THE VOLUNTEER FIREFIGHTERS' COMPENSATION ACT UNDER THE PUBLIC EMPLOYEES' RETIREMENT BOARD; AMENDING SECTIONS 19-12-102, 19-12-103, 19-12-201 THROUGH 19-12-204, 19-12-402 THROUGH 19-12-404, 19-12-407, 19-12-502 THROUGH 19-12-504, AND 19-12-506, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-12-102, MCA, is amended to read:

"19-12-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Board" means the public employees' retirement board *provided for in 2-15-1009.*

(2) "Fire company" means a fire co~ ~ny organized in an unincorporated area, town, or village under the la\ ~ the state of Montana.

(3) The fiscal year begins on July 1 ana ends on June 30 of each year.

(4) "Fund" or "volunteer firefighters' fund" means the volunteer firefighters' compensation account in the agency fund."

Section 2. Section 19-12-103, MCA, is amended to read:

"19-12-103. Payments to volunteer fire companies maintaining group insurance. To encourage and aid volunteer fire companies to

maintain group insurance for benefits on account of the death of or injury incurred by members while in the performance of duties as volunteer firefighters, $75 per year for each mobile unit of firefighting equipment, not exceeding two units for any one company, shall be paid by the *board* from the volunteer firefighters' fund to each volunteer fire company maintaining such insurance or to the organization or agency maintaining such insurance for a volunteer fire company."

Section 3. Section 19-12-201, MCA, is amended to read:

"19-12-201. Administration of chapter. *The board* shall administer the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, and all payments made under *19-12-103,* 19-12-405, 19-12-407, *and 19-12-506* shall be made by warrants drawn by the *board.*"

Section 4. Section 19-12-202, MCA, is amended to read:

"19-12-202. Reports of board. *(1)* The *board* shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the *Volunteer Firefighters' Compensation Act and the* volunteer firefighters' pension plan, with such suggestions or recommendations as it may consider of value for public information.

(2) Copies of all such reports shall be made available by the *board* to the chief or other representative of any volunteer fire company or companies which may at any time request them."

Section 5. Section 19-12-203, MCA, is amended to read:

"19-12-203. Rules to be made by board. The board shall make such rules as *it* considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act *and the volunteer firefighters' pension plan,* not inconsistent with the provisions thereof."

Section 6. Section 19-12-204, MCA, is amended to read:

"19-12-204. Office supplies to be a charge against the fund. Necessary expenses of the *board* for office supplies, stationery, and forms in connection with the administration of the Volunteer Firefighters' Compensation Act *and the volunteer firefighters' pension plan* are a charge against the fund. The *board* shall draw from the fund through warrants at such intervals as *it* considers proper *to pay these expenses.*"

Section 7. Section 19-12-402, MCA, is amended to read:

"19-12-402. Certificate of eligibility. On or before September 1 of each year, the chief or foreman of every volunteer fire company shall prepare and file with the *board* a certificate, subscribed and verified under oath, stating whether or not his company qualified under 19-12-401(4) during the preceding fiscal year and listing the full name and residence address of each member of his company who satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 19-12-401(3). The verified certificate shall be maintained in a permanent file by the *board* for the purpose of establishing eligibility for participation

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in the volunteer firefighters' pension plan and shall be open for inspection as a public record."

Section 8. Section 19-12-403, MCA, is amended to read:

"19-12-403. Procedure for claiming pension benefits. (1) Anyone claiming eligibility under the volunteer firefighters' pension plan must file his claim with the *board* upon a form to be provided therefor by *the board*. The claim must be filed on or before May 1 of the calendar year in which the claimant seeks to qualify for participation in the pension plan.

(2) The claim must contain:

(a) the name, address, and date of birth of the claimant and of the volunteer firefighter, if he is not the claimant;

(b) the fiscal year during which eligibility will commence; and

(c) the years during which service as a volunteer firefighter was rendered and the names of the volunteer fire companies with which the service was rendered.

(3) The *board* may require such proof of age and service as it may consider proper, but it must accept a certificate filed under 19-12-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of such service.

(4) If the claim is properly filed and the claimant is found by the *board* to be properly qualified to participate in the volunteer firefighters' pension plan, the name of the claimant shall be added to the list of qualified persons and the claimant will then be entitled to participate in the volunteer firefighters' pension plan as of the fiscal year beginning July 1 next following the filing of the claim."

Section 9. Section 19-12-404, MCA, is amended to read:

"19-12-404. Pension benefits. (1) Each person who meets the requirements set forth in 19-12-401 or, in the case of a beneficiary, 19-12-405(1) and who has completed and filed a claim as provided in 19-12-403 is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this section.

(2) The payments shall be computed each year in the following manner:

(a) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of $1 million, the *board* shall set aside the smaller of the amount in excess of $1 million and an amount equal to 95% of the increase of the balance over the balance at the end of the preceding fiscal year for the payment by the *board* of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing the amount set aside by the number of claimants qualifying to participate in the pension plan at the beginning of such succeeding fiscal year.

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(b) The total pension payable to a qualified claimant under this section may not exceed $100 per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of $100 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made.

(c) For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter shall be treated collectively as one claimant.

(3) If the amount set aside is sufficient to pay each qualified claimant at least $20 per month throughout the succeeding fiscal year, the pension shall be paid monthly on or before the last day of each month. If the amount set aside is not sufficient to pay each qualified claimant at least $20 per month, each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before December 15 of that year."

Section 10. Section 19-12-407, MCA, is amended to read:

"19-12-407. Payment of pension benefits. All payments under the volunteer firefighters' pension plan must be approved by the *board* and paid by warrants drawn upon the agency fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-12-405(1)."

Section 11. Section 19-12-502, MCA, is amended to read:

"19-12-502. Procedure for claiming disability benefits. (1) A firefighter claiming benefits under 19-12-504 must file his claim with the *board* on a form to be provided *by the board.* The claim must be verified by the claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined. The claim must be filed with the *board* within 1 year from the date of disability.

(2) The claim must contain:

(a) the name and address of the claimant;

(b) the date, place, and manner of incurring of disability;

(c) the name and address of the attending physician or surgeon and/or nurse, if any;

(d) the dates of confinement, if confined, or if not confined, the dates of attendance by a physician or surgeon and the dates of attendance by a nurse;

(e) the affidavit of the attending physician or surgeon as to the nature of the disability, the number and dates of visits, and the charges;

(f) if confined in a hospital, the affidavit of a person in charge stating the nature of the disability, the dates of confinement, and the expenses incurred while so confined;

(g) the affidavit of the chief or secretary of the fire company stating that the fire company was duly organized under the laws of Montana in

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an unincorporated town or village, that the claimant was, at the date of disability, an active enrolled member of the company, and that the disability was incurred in the line of duty;

(h) the affidavit of the nurse stating the nature of the disability, the dates of attendance, and the charges for services."

Section 12. Section 19-12-503, MCA, is amended to read:

"19-12-503. Procedure for claiming death benefit. Anyone claiming the benefit provided for in 19-12-505 must file his claim with the *board* upon a form to be provided by the *board*, in accordance with such rules as the *board* may make."

Section 13. Section 19-12-504, MCA, is amended to read:

"19-12-504. Disability benefits. (1) Each member of a fire company is entitled to receive compensation for disability incurred while in the performance of his duties as a firefighter when the disability necessitates the services of a physician or surgeon, whether the member is confined or not. The compensation shall equal the amount of the member's necessary and reasonable medical expenses resulting directly from the disability and incurred within 36 months from the date of the injury which caused the disability. The total compensation may not exceed $25,000.

(2) When an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the *board* shall order that an artificial member be furnished. The expense of furnishing an artificial member may not exceed $1,500. The artificial member so furnished shall be replaced every 5 years, if necessary."

Section 14. Section 19-12-506, MCA, is amended to read:

"19-12-506. Payment of disability and death benefits. When a claim under 19-12-504 or 19-12-505 is received by the *board* and is found to be in compliance with 19-12-502 or, in the case of a claim under 19-12-505, with 19-12-503, the *board* must order the allowance thereof and pay it by warrants drawn upon the volunteer firefighters' fund to the order of the attending physician or surgeon, attending nurse, and hospital or the provider of funeral services, as applicable."

Section 15. **Effective date.** This act is effective July 1, 1983.

Approved March 11, 1983.

CHAPTER NO. 58

AN ACT TO INCREASE FROM $3,000 TO $10,000 THE ALLOWABLE END-OF-THE-YEAR CASH BALANCE OF A SCHOOL DISTRICT HOUSING AND DORMITORY FUND; AMENDING SECTION 20-9-509, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-509, MCA, is amended to read:

"20-9-509. Housing and dormitory fund. (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings

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under a lease or rental agreement with pupils or teachers or receives moneys under the provision of 20-6-607 may establish a housing and dormitory fund. All moneys received from such lease or rental agreements may be deposited with the county treasurer to the credit of the housing and dormitory fund, general fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a housing and dormitory fund is more than *$10,000*, such cash balance in excess of *$10,000* shall be transferred to the general fund of the district.

(2) Any expenditure of moneys from a housing and dormitory fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the housing and dormitory fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Approved March 14, 1983.

CHAPTER NO. 59

AN ACT TO REMOVE THE RESTRICTION ALLOWING ONLY NATURAL PERSONS TO HOLD A LIQUOR LICENSE TRANSFERRED BETWEEN QUOTA AREAS; AMENDING SECTION 16-4-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-204, MCA, is amended to read:

"16-4-204. Contents of license — posting — privilege — catering endorsement — transfer — expiration. (1) Every license issued under this part shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

(3) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license, and in such event the

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license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(4) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(5) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(6) (a) Except as provided in subsection (6)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than 33% in the most recent census prescribed in 16-4-502; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (6)(a), the license may not be mortgaged or pledged as

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security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (6)(a), it may not be transferred to another quota area or back to the original quota area.

(7) (a) Any all-beverage licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverage license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $40 must be filed with the department at least 10 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverage licensee who holds an endorsement granted under this subsection (7) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event is to be held issued by the department of health and environmental sciences.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(8) Except as above provided, no license shall be transferred or sold nor shall it be used for any place of business not described in the license; provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

(9) All licenses shall expire at midnight of June 30 of each year."

Approved March 14, 1983.

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CHAPTER NO. 60

AN ACT TO DELETE THE REQUIREMENT THAT INSURANCE COMPANIES REPORT THE TOTAL NUMBER OF JUDGMENTS AND VERDICTS IN THEIR ANNUAL PRODUCTS LIABILITY REPORTS; AMENDING SECTION 33-2-721, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-721, MCA, is amended to read:

"33-2-721. Product liability insurer — report. (1) Each insurance company doing business in this state that insures against product liability losses shall make and file with the department of insurance, on or before April 1 of each year, a report for the year ending December 31 immediately preceding, upon a form to be prescribed and that may be furnished by the department.

(2) The report shall include the following information:

(a) the amount of product liability insurance premiums collected for the year, indicating the amount of premiums allocable to Montana and the total nationwide amount;

(b) information for product liability insurance experience separately allocated to Montana and nationwide showing the:

(i) total amount of earned premiums;

(ii) total amount of incurred losses, including all loss adjustment expense;

(iii) amount of reserves for both reported and unreported incurred losses; and

(iv) amount of other reserves for other product liability losses; and

(c) for any claim, loss, or action for bodily injury, death, or property damage allocated to Montana experience if there has been a final judgment or a settlement in any amount or if there has been a final disposition not resulting in a loss payment on behalf of the insured:

(i) a description of the type of product involved in each claim;

(ii) the date of occurrence from which each claim arose;

(iii) the state or other jurisdiction wherein each claim was adjudicated, settled, or other disposition made;

(iv) the date legal action commenced, if filed;

(v) a brief description of the occurrence out of which the claim arose;

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(vi) the total number of all claims;

(vii) the total number of all claims closed without payments; *and*

(viii) such other information as the department may require."

Approved March 14, 1983.

CHAPTER NO. 61

AN ACT EXTENDING FOR 2 YEARS THE TERMINATION DATE OF CHAPTER 552, LAWS OF 1981, CONCERNING THE STATE EMPLOYEE INCENTIVE PROGRAM; AMENDING CHAPTER 552, SECTION 7, LAWS OF 1981; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Chapter 552, section 7, Laws of 1981, is amended to read:

"Section 7. Termination date. All provisions of this act shall terminate on July 1, *1985*."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved March 14, 1983.

CHAPTER NO. 62

AN ACT PROVIDING FOR CONGRUENCE OF HIGHWAY COMMISSION DISTRICTS AND HIGHWAY FINANCIAL DISTRICTS; AMENDING SECTIONS 2-15-2502 AND 60-3-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2502, MCA, is amended to read:

"2-15-2502. Highway commission. (1) The highway commission consists of five members. One member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, *Powell*;

(b) District 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, *Broadwater, Jefferson*, Park;

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, *Lewis and Clark*;

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(d) District 4. *Carter, Powder River, Fallon, Custer, Rosebud,* Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, *Judith Basin, Fergus, Petroleum,* Treasure, *Wheatland, Sweet Grass.*

(2) No two members may at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(3) Not more than three members may at the time of appointment or thereafter during their respective terms be members of the same political party.

(4) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee may be a member of the commission.

(5) No resolution, motion, or other decision of the commission may be adopted or passed without the favorable vote of at least three members.

(6) The commission is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(7) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission."

Section 2. Section 60-3-203, MCA, is amended to read:

"60-3-203. Districts for apportionment of department funds. All money available to the department for highway construction purposes shall be apportioned among *five* financial districts, *corresponding to and congruent with the highway commission districts established in 2-15-2502.*"

Section 3. **Effective date.** This act is effective on July 1, 1983.

Approved March 14, 1983.

CHAPTER NO. 63

AN ACT TO ELIMINATE THE REQUIREMENT THAT AGENCIES REPORT TO THE ADMINISTRATIVE CODE COMMITTEE THEIR RECOMMENDATIONS FOR LEGISLATION CLARIFYING GRANTS OF RULEMAKING AUTHORITY; AMENDING SECTION 2-4-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-314, MCA, is amended to read:

"2-4-314. Biennial review by agencies — recommendations by committee. (1) Each agency shall at least biennially review its rules

to determine if any new rule should be adopted or any existing rule should be modified or repealed.

(2) The committee may recommend to the legislature those modifications, additions, or deletions of agency rulemaking authority which the committee considers necessary."

Approved March 14, 1983.

CHAPTER NO. 64

AN ACT TO REQUIRE THE ADMINISTRATIVE CODE COMMITTEE TO REVIEW ALL RULES ADOPTED BY CERTAIN AGENCIES PRIOR TO APRIL 14, 1975, FOR COMPLIANCE WITH SECTION 2-4-305, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Review of existing rules required.** Notwithstanding the provisions of 2-4-402, the administrative code committee shall review all administrative rules adopted prior to April 14, 1975, by agencies subject to the provisions of the Montana Administrative Procedure Act. The committee shall review the rules to determine whether agencies have substantially complied with subsections (5) and (6) of 2-4-305, as that section read on November 18, 1982.

Section 2. **Power of the committee.** (1) If the committee determines that a rule violates 2-4-305(5) or 2-4-305(6), as that section read on November 18, 1982, it may:

(a) take those steps authorized by 2-4-402(3)(a); or

(b) poll the legislature in accordance with 2-4-403, as that section may be amended by Senate Bill No. 33. If 2-4-403 is not amended by Senate Bill No. 33, no poll of the legislature may be taken by the committee on any rule reviewed pursuant to [section 1].

(2) The committee may advise an agency concerning such matters as clarity, form, style, grammar, punctuation, and spelling with respect to any rule reviewed under [section 1].

Section 3. **Committee to report to legislature.** Prior to January 1, 1987, the committee shall prepare a report of its activities and any recommendations to be submitted to the legislature.

Section 4. **Effective date — termination.** This act is effective on passage and approval and terminates January 1, 1987.

Approved March 14, 1983.

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CHAPTER NO. 65

AN ACT TO TRANSFER RODENT CONTROL FUNCTIONS FROM THE DEPARTMENT OF LIVESTOCK TO THE DEPARTMENT OF AGRICULTURE; TO RENAME AND EXPAND THE PROGRAM TO INCLUDE VERTEBRATE SPECIES THAT MAY BE INJURIOUS TO AGRICULTURE, OTHER INDUSTRIES, AND THE PUBLIC; AMENDING SECTIONS 81-1-401 AND 81-1-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transfer of functions — terminology change.** (1) The functions of the department of livestock relating to rodent control as provided in Title 81, chapter 1, part 4, are transferred to the department of agriculture under Title 80, chapter 7.

(2) All references in Title 81, chapter 1, part 4, to the "department", meaning "department of livestock", are changed to mean "department of agriculture".

Section 2. Section 81-1-401, MCA, is amended to read:

"81-1-401. Department to operate vertebrate pest management program. The department may establish and operate organized and systematic programs for the *management* and suppression of *vertebrate pests. Vertebrate pests are defined as* jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, *skunks, raccoons, bats, and the following depredatory and nuisance birds: blackbirds, cowbirds, starlings, house sparrows, and feral pigeons* when they are injurious to agriculture, other industries, and the public. For this purpose, the department may enter into written agreements with appropriate federal agencies, other state agencies, counties, associations, corporations, or individuals covering the methods and procedures to be followed in the *management* and suppression of these *vertebrate pests*, the extent of supervision to be exercised by the department, and the use and expenditure of funds appropriated, when this cooperation is necessary to promote the *management* and suppression of *vertebrate pests. Management is the correct identification of a vertebrate pest, recognition of its biology and environmental needs, assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress these damages, nuisances, or injuries, and evaluating the effects of these control methods.*"

Section 3. Section 81-1-403, MCA, is amended to read:

"81-1-403. Purchase and sale of vertebrate pest management supplies. In addition to the expenditures authorized in 81-1-402, the department may purchase *vertebrate pest management* supplies, including baits, for the use of cooperating governmental agencies, counties, associations, corporations, or individuals in the *management* of *vertebrate*

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pests and to make these supplies and baits available to the cooperators at approximate cost."

Section 4. **Codification instruction.** All sections contained in Title 81, chapter 1, part 4, are intended to be renumbered and recodified as an integral part of Title 80, chapter 7, and the provisions of Title 80 apply to those sections.

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved March 14, 1983.

CHAPTER NO. 66

AN ACT PROVIDING FOR FURNISHING OF ELECTOR LISTS AND ELECTOR MAILING LABELS TO ANY ELECTOR; AND PROVIDING THE BASIS FOR CHARGES FOR PRECINCT REGISTERS, ELECTOR LISTS, OR MAILING LABELS IF THE REGISTRAR CHARGES FOR THESE ITEMS; AMENDING SECTION 13-2-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-122, MCA, is amended to read:

"13-2-122. Charges for registers, elector lists, and mailing labels made available to public. Upon written request, the registrar shall furnish *to* any *elector for noncommercial use* a copy of the official precinct registers, *a current list of registered electors, or mailing labels for registered electors.* Upon delivery, the registrar *may* collect a charge *not to exceed the actual cost of the register, list, or mailing labels.*"

Approved March 14, 1983.

CHAPTER NO. 67

AN ACT TO REVISE THE RODENT CONTROL LAW; TO AUTHORIZE THE GOVERNING BODY OF A COUNTY TO ESTABLISH A PROGRAM FOR THE MANAGEMENT AND SUPPRESSION OF VERTEBRATE PESTS; AMENDING SECTIONS 7-22-2207, 7-22-2215, AND 7-22-2216, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2207, MCA, is amended to read:

"7-22-2207. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means the rodent control board for a district.

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(2) "Department" means the department of livestock.

(3) "District" means a rodent control district created under the provisions of this part.

(4) "Fund" means the rodent control district fund authorized by 7-22-2221.

(5) "Governing body" means the governing body specified in the alternative form of government adopted by a county.

(6) "Rodent" means Columbia ground squirrel (*Spermophilus* columbianus), Richardson ground squirrel (*Spermophilus* richardsonii), Aramatus ground squirrel (*Spermophilus* aramatus), thirteen-striped ground squirrel (*Spermophilus* triecemlineatus), pocket gopher (Thomomys, various species), field mice (Microtus, various species), and prairie dog (Cynomys ludovicianus)."

Section 2. Section 7-22-2215, MCA, is amended to read:

"7-22-2215. Rodent control board. *(1) A governing body creating a rodent control district shall appoint a rodent control board composed of not less than three or more than five members. The county extension agent is an ex officio member of the board. Each member of the board must be an elector and reside within the district.*

(2) Board members serve 3-year staggered terms. Of the members first appointed to a board, at least one shall serve a 1-year term and at least one shall serve a 2-year term.

(3) Each member of the board is entitled to:

(a) a mileage allowance as provided in 2-18-503 for the distance actually and necessarily traveled to perform official duties; and

(b) per diem expenses established by the governing body.

(4) The county weed board appointed under 7-22-2103 *may be appointed by the governing body to also* serve as the rodent control board, *in which case the qualifications, terms, compensation, mileage, and expenses of the rodent control board are the same as those of the county weed board and subsections (1) through (3) do not apply.*"

Section 3. Section 7-22-2216, MCA, is amended to read:

"7-22-2216. Board powers. *(1)* The board may:

(a) develop and administer a program for the abatement and alleviation of rodent pest conditions within the district;

(b) employ such assistants and employees as are necessary;

(c) purchase or lease such equipment, material, or services as are considered necessary for an effective control program;

(d) sell or lease such equipment, material, or services to district landowners or residents as are considered necessary to implement the rodent abatement program;

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(e) cooperate with any corporation, association, group, individual, or state or federal agency in rodent abatement programs;

(f) receive gifts or grants for the implementation of a rodent abatement program; and

(g) enter district lands in order to survey and study conditions and to implement a rodent abatement program.

(2) The board shall cooperate with the department in the management and suppression of rodent pests and may enter into written agreements with the department."

Section 4. **Definitions.** As used in [sections 4 through 9], the following definitions apply:

(1) "Department" means the department of livestock.

(2) "Governing body" means the governing body specified by the form of government adopted by a county.

(3) "Management of vertebrate pests" means the correct identification of a vertebrate pest; recognition of its biological and environmental needs; assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress such damage, nuisance; or injury; and evaluating the effects of these control methods.

(4) "Vertebrate pests" means jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, skunks, raccoons, bats, and the following depredatory and nuisance birds: blackbirds, cowbirds, starlings, house sparrows, and feral pigeons, when such animals and birds are injurious to agriculture, other industries, or the public.

Section 5. **Management of vertebrate pests.** (1) A governing body may establish a program to manage and suppress vertebrate pests.

(2) A governing body that establishes a program under subsection (1) must cooperate with the department in the management and suppression of vertebrate pests, including cooperation in regard to the department's organized and systematic plans covering methods and procedures to be followed in the management and suppression of vertebrate pests.

(3) A governing body, in cooperation with the department, may enter into cooperative agreements with state and federal governmental agencies, counties, rodent control districts, associations, corporations, or individuals when cooperation is necessary to promote the management and suppression of vertebrate pests.

Section 6. **Agreements with department.** A governing body, when cooperating with the department, may enter into written agreements with the department of livestock covering the methods and procedures to be followed in the management and suppression of vertebrate pests, the

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extent of supervision to be exercised by the governing body, and the use and expenditures of state and county money.

Section 7. **County vertebrate pest management fund.** A governing body that establishes a program to manage and suppress vertebrate pests must establish a county vertebrate pest management fund, from which the governing body may appropriate money for the operation of the program.

Section 8. **Financing of vertebrate pest management program — tax.** (1) A governing body may:

(a) appropriate from the county general fund an amount not in excess of $10,000 annually and transfer it to the county vertebrate pest management fund; and

(b) levy a vertebrate pest management tax not to exceed 2 mills on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements. Land within a rodent control district may not be taxed in any given year under both 7-22-2222 and this section for the control of rodents as defined in 7-22-2207. Land within a rodent control district may be taxed under this section only a dollar amount that is proportional to part of the vertebrate pest program's projected fiscal year budget which is allocated to the management and suppression of vertebrate pests other than rodents.

(2) The tax provided for in subsection (1) must be collected as other county taxes and credited to the county vertebrate pest management fund.

Section 9. **Expenditures for supplies and services authorized.** A governing body may make necessary expenditures from the county vertebrate pest management fund for equipment, materials, supplies, personal services, and other expenses. A governing body may also purchase vertebrate pest management supplies and equipment for use by cooperating governmental agencies, counties, rodent control districts, associations, corporations, or individuals in the management of vertebrate pests if the governing body charges such users the approximate cost of the supplies and equipment. Receipts from the resale of such supplies and equipment to the cooperating users must be credited to the county vertebrate pest management fund.

Section 10. **Coordination instruction.** If House Bill No. 85, transferring vertebrate pest management responsibility from the department of livestock to the department of agriculture, is passed and approved, references to the "department of livestock" in this act are amended to read "department of agriculture".

Section 11. **Effective date.** This act is effective on passage and approval.

Approved March 14, 1983.

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CHAPTER NO. 68

AN ACT TO PROVIDE THAT THE DEPARTMENT OF STATE LANDS MAY ALLOW ONE ANNUAL REPORT TO BE FILED FOR EACH OPERATION RATHER THAN ONE FOR EACH PERMIT UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; AMENDING SECTION 82-4-237, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-237, MCA, is amended to read:

"82-4-237. Operator to file annual reports. (1) An operator shall file an annual report with the department within 30 days of the anniversary date of each permit. *In lieu of an annual report for each permit, the department may allow the operator to file an annual report for each operation on a date determined by the department.* Included within *an annual* report shall be:

(a) the name and address of the operator and permit number *or numbers*;

(b) a report in such detail as the department shall require, supplemented with maps, cross sections, or other material indicating the extent to which mining operations have been carried out, the progress of all reclamation work, including the type of planting or seeding, mixture and amount of seed, date of planting or seeding, and area of land planted, the extent to which expectations and predictions made in the original application have been fulfilled and any deviation therefrom, and the number of acres affected; and

(c) a revised schedule or timetable of operations and reclamation and an estimate of the number of acres to be affected during the next 1-year period.

(2) Upon receipt of the annual report, the department may make further inquiry and request further information and, if it does so, shall allow a reasonable opportunity for the operator to respond.

(3) When problem situations are revealed by review of new information or as a result of field inspections, the department may order such changes in the mining and reclamation plans as are necessary to insure compliance with this part."

Approved March 14, 1983.

CHAPTER NO. 69

AN ACT TO COMPENSATE MEMBERS OF THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION AT THE SAME RATE AS MEMBERS OF THE LEGISLATURE; AMENDING SECTION 5-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-1-104, MCA, is amended to read:

"5-1-104. Compensation and expenses. Commissioners are entitled to *the same* compensation *and expenses as provided to members of*

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the legislature in 5-2-302 while attending commission meetings or carrying out the official duties of the commission."

Approved March 14, 1983.

CHAPTER NO. 70

AN ACT RELATING TO THE REPORTING AND MAINTAINING OF ELECTION RECORDS BY MUNICIPALITY; AMENDING SECTIONS 13-1-204 AND 13-15-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-204, MCA, is amended to read:

"13-1-204. Election records to be kept by secretary of state. (1) The secretary of state shall maintain current and accurate records including:

(a) a list of all precincts in each county;

(b) a map showing the boundaries of all precincts in each county;

(c) a count of the number of registered voters in each precinct for the latest general election;

(d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the latest general election;

(e) a count of votes cast at the latest general election by precinct and by legislative, judicial, and multicounty districts.

(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections shall be open for public inspection during normal office hours."

Section 2. Section 13-15-404, MCA, is amended to read:

"13-15-404. Information to be entered on record. (1) The secretary of the board shall prepare and file in the official records of his office a report of the canvass which lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

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(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; *and*

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual shall be entered in the report in the same place as the votes for other individuals for the same office but shall be identified as write-in votes."

Approved March 14, 1983.

CHAPTER NO. 71

AN ACT TO MAKE THE TERM OF OFFICE OF COUNTY TREASURER RUN CONCURRENTLY WITH OTHER COUNTY OFFICES; AMENDING SECTION 7-4-2205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2205, MCA, is amended to read:

"7-4-2205. Term of office. (1) Persons elected to the different offices named in 7-4-2203 shall hold their respective offices for the term of 4 years and until their successors are elected and qualified.

(2) Persons appointed to the different offices serve at the pleasure of the commissioners.

(3) The officers mentioned in this part must take office on the first Monday of January succeeding their election."

Section 2. **Transition.** A county treasurer holding office on the effective date of this act or a person appointed to fill the unexpired term of such a treasurer continues to serve until the first Monday of March after the election of his successor. Notwithstanding the provisions of 7-4-2205(1), the successor's term expires on the first Monday in January following the election of his successor.

Approved March 14, 1983.

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CHAPTER NO. 72

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO EVIDENCE; AMENDING SECTIONS 26-1-101, 26-1-102, 26-1-201 THROUGH 26-1-203, 26-1-302, 26-1-303, 26-1-401, 26-1-402, 26-1-501, 26-1-601, 26-1-602, 26-1-607, 26-1-622, 26-1-623, 26-1-805, 26-2-104, 26-2-302, AND 26-2-404, MCA; REPEALING SECTIONS 26-1-107, 26-1-108, AND 26-1-621, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-1-101, MCA, is amended to read:

"26-1-101. General definitions. (1) *"Direct examination" is the first* examination of a witness *on a particular matter. "Cross examination" is* the examination of *a* witness *by a* party *other than the direct examiner.*

(2) *"Evidence"* is the means of ascertaining in a judicial proceeding the truth respecting a question of fact, *including but not limited to witness testimony, writings, physical objects, or other things presented to the senses.*

(3) A *"leading question" is a* question which suggests to the witness the answer which the examining party desires.

(4) "Proof" is the establishment of a fact by evidence.

(5) A "witness" is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit."

Section 2. Section 26-1-102, MCA, is amended to read:

"26-1-102. Definitions — kinds of evidence. (1) (a) "Conclusive evidence" is that which the law does not permit to be contradicted.

(b) No evidence is by law made conclusive unless so declared by *statute.*

(2) "Cumulative evidence" is additional evidence of the same character to the same point.

(3) "Corroborative evidence" is additional evidence of a different character to the same point.

(4) "Direct evidence" is that which proves *a* fact without an inference or presumption and which in itself, if true, establishes that fact.

(5) "Circumstantial evidence" is that which tends to establish *a* fact by proving another and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence.

(6) "Prima facie evidence" is that which *proves* a particular fact until contradicted and overcome by other evidence."

Section 3. Section 26-1-201, MCA, is amended to read:

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"26-1-201. Questions of law. *Except as provided in Article II, section 7, of the Montana constitution, all* questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules of evidence, *must* be decided by the court."

Section 4. Section 26-1-202, MCA, is amended to read:

"26-1-202. Questions of fact. *If a trial is by jury, all* questions of fact other than those mentioned in 26-1-201 *must* be decided by the jury, and all evidence thereon *must* be addressed to them, except *as* otherwise provided by *law. If the trial of a question of fact is not by jury, all evidence thereon must be addressed to the trial court, which shall decide such question.*"

Section 5. Section 26-1-203, MCA, is amended to read:

"26-1-203. Who to judge effect and value of evidence. The jury, subject to the control of the court, is the judge of the effect *and* value of evidence addressed to it, except when the evidence is declared to be conclusive. *The court is the judge of the effect and value of evidence addressed to it.*"

Section 6. Section 26-1-302, MCA, is amended to read:

"26-1-302. Witness presumed to speak the truth — how presumption rebutted. A witness is presumed to speak the truth. *The* jury *or the court in the absence of a jury* is the exclusive judge of his credibility. *This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness' testimony; such matters include but are not limited to:*

(1) the demeanor or manner of the witness while testifying;

(2) the character of the witness' testimony;

(3) bias of the witness for or against any party involved in the case;

(4) interest of the witness in the outcome of the litigation or other motive to testify falsely;

(5) the witness' character for truth, honesty, or integrity;

(6) the extent of the witness' capacity and opportunity to perceive or capacity to recollect or to communicate any matter about which he testifies;

(7) inconsistent statements of the witness;

(8) an admission of untruthfulness by the witness;

(9) other evidence contradicting the witness' testimony."

Section 7. Section 26-1-303, MCA, is amended to read:

"26-1-303. Instructions to jury on how to evaluate evidence. The jury is to be instructed by the court on all proper occasions *that*:

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(1) their power of judging the effect of evidence is not arbitrary but to be exercised with legal discretion and in subordination to the rules of evidence;

(2) they are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

(3) a witness false in one part of his testimony is to be distrusted in others;

(4) the testimony of *a person legally accountable for the acts of the accused* ought to be viewed with distrust;

(5) if weaker and less satisfactory evidence is offered *and* it appears that *it is within the power of the party to offer* stronger and more satisfactory *evidence*, the evidence offered should be viewed with distrust."

Section 8. Section 26-1-401, MCA, is amended to read:

"26-1-401. Who has the burden of producing evidence. The *initial* burden of *producing evidence as to a particular fact is* on the party who would be defeated if no evidence were given on either side. *Thereafter, the burden of producing evidence is on the party who would suffer a finding against him in the absence of further evidence.*"

Section 9. Section 26-1-402, MCA, is amended to read:

"26-1-402. Who has the burden of persuasion. *Except as otherwise provided by law, a* party *has the burden of persuasion as to each fact the existence or nonexistence of which is essential to the claim for relief or defense he is asserting.*"

Section 10. Section 26-1-501, MCA, is amended to read:

"26-1-501. Inference defined. An "inference" is a deduction which the *trier of fact may make* from the *evidence.*"

Section 11. Section 26-1-601, MCA, is amended to read:

"26-1-601. List of conclusive presumptions. The following presumptions are conclusive:

(1) the truth of a declaration, act, or omission of a party, as against that party in any litigation arising out of such declaration, act, or omission, whenever *he* has, by *such* declaration, act, or omission, intentionally led another to believe a particular thing true and to act upon such belief;

(2) that a tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

(3) the judgment or order of a court, *which is* declared by *statute* to be conclusive;

(4) any other presumption which, by statute, is expressly made conclusive."

Section 12. Section 26-1-602, MCA, is amended to read:

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"26-1-602. Disputable presumptions. All other presumptions are "disputable presumptions" and may be controverted by other evidence. The following are of that kind:

(1) *A* person is innocent of crime or wrong.

(2) *An* unlawful act was done with an unlawful intent.

(3) *A* person intends the ordinary consequence of his voluntary act.

(4) *A* person takes ordinary care of his own concerns.

(5) *Evidence* willfully suppressed would be adverse if produced.

(6) *More satisfactory* evidence would be adverse *if weaker and less satisfactory evidence is offered and it is within the power of the party to offer more satisfactory evidence.*

(7) *Money* paid by one to another was due the latter.

(8) *A* thing delivered by one to another belonged to the latter.

(9) *When the instrument evidencing an* obligation *has been* delivered to the debtor, *the obligation* has been paid.

(10) *Prior* rent or installments have been paid when a receipt for *later rent or installments* is produced.

(11) *Things* which a person possesses are owned by him.

(12) *A* person is the owner of property *if he exercises* acts of ownership over it or *there is* common reputation of his ownership.

(13) *A* person in possession of an order on himself for the payment of money *or* the delivery of a thing has paid the money or delivered the thing accordingly.

(14) *A* person acting in a public office was regularly appointed to it.

(15) *Official* duty has been regularly performed.

(16) *A* court or judge acting as such, whether in this state or any other state or country, was acting in the lawful exercise of its or his jurisdiction.

(17) *A* judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties.

(18) *All* matters within an issue were laid before the jury and passed upon by them, and in like manner, all matters within a submission to arbitration were laid before the arbitrators and passed upon by them.

(19) *Private* transactions have been fair and regular.

(20) *The* ordinary course of business has been followed.

(21) *A* promissory note or bill of exchange was given or endorsed for a sufficient consideration.

(22) *An* endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill.

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(23) *A* writing is truly dated.

(24) *A* letter duly directed and mailed was received in the regular course of the mail.

(25) *There is an* identity of persons *when there is an* identity of *names.*

(26) *A* person not heard from in 7 years is dead.

(27) *Acquiescence* followed from a belief that the thing acquiesced in was conformable to the right or fact.

(28) *Things* have happened according to the ordinary course of nature and the ordinary habits of life.

(29) *Persons* acting as partners have entered into *a* contract of partnership.

(30) *A* man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.

(31) *A* child born in lawful wedlock, there being no divorce from bed and board, is legitimate.

(32) *A* thing once proved to exist continues as long as is usual with things of that nature.

(33) *The* law has been obeyed.

(34) A printed and published book purporting to be printed or published by public authority was so printed or published.

(35) A printed and published book purporting to contain reports of cases adjudged in the tribunals of the state or country where the book is published contains correct reports of such cases.

(36) A trustee or other person whose duty it was to convey real property to a particular person has actually conveyed to him. *This* presumption *applies when it* is necessary to perfect the title of such person or his successor in interest.

(37) When there has been uninterrupted use by the public of land for a burial ground for 5 years, with the consent of the owner and without a reservation of his rights, *he intended* to dedicate it to the public for that purpose.

(38) There was a good and sufficient consideration for a written contract."

Section 13. Section 26-1-607, MCA, is amended to read:

"26-1-607. When writings of a decedent prima facie evidence. The entries and other writings of a decedent, made at or near the time of the transaction and *when the decedent was* in a position to know the facts stated therein, *are* prima facie evidence of the facts stated therein, in the following cases:

(1) when the *writing or* entry was made against the interest of the person making it;

(2) when it was made in a professional capacity and in the ordinary course of professional conduct;

(3) when it was made in the performance of a duty specially enjoined by law."

Section 14. Section 26-1-622, MCA, is amended to read:

"26-1-622. Official reports and records made pursuant to federal law prima facie evidence. An official written report or record, or duly certified copy thereof, that a person is *dead or alive;* missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy, made by any officer or employee of the United States authorized by law of the United States to make same, shall be received in any court, office, or other place in this state as prima facie evidence that such person is *dead or alive;* missing; missing in action; interned in a neutral country; or beleaguered, besieged, or captured by an enemy, as the case may be."

Section 15. Section 26-1-623, MCA, is amended to read:

"26-1-623. Presumption of authenticity of finding, report, or record. For the purposes of 26-1-622, any finding, report, or record or duly certified copy thereof purporting to have been signed by such an officer or employee of the United States as is described in *that section* shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify."

Section 16. Section 26-1-805, MCA, is amended to read:

"26-1-805. Doctor-patient privilege. *Except as provided in Rule 35, Montana Rules of Civil Procedure, a* licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient."

Section 17. Section 26-2-104, MCA, is amended to read:

"26-2-104. Disobedience — how punished. Disobedience to a subpoena or a refusal to be sworn or to answer as a witness or to subscribe an affidavit or deposition, when required, may be punished as a contempt by the court issuing the subpoena or requiring the witness to be *so* sworn, *to so answer, or to so subscribe*; and if the witness be a party, his complaint or answer may be stricken out."

Section 18. Section 26-2-302, MCA, is amended to read:

"26-2-302. Witness required to answer questions. A witness must answer questions legal and pertinent to the matter in issue though his answer may establish a claim against himself, but he need not give an answer which will have a tendency to subject him to punishment for a felony, nor need he give an answer which will have a direct tendency to

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degrade his character unless it be to the very fact in issue or to a fact from which the fact in issue would be presumed."

Section 19. Section 26-2-404, MCA, is amended to read:

"26-2-404. Affidavit of arrested witness — exoneration of arresting officer. (1) An officer is not liable for making the arrest in ignorance of the facts creating the exoneration but is liable for any subsequent detention of the *witness* if such *witness claims* the exemption and *makes* an affidavit stating that:

(a) he has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued;

(b) he has not thus been served by his own procurement with the intention of avoiding arrest; and

(c) he is at the time going to the place of attendance, returning therefrom, or remaining there in obedience to the subpoena.

(2) The affidavit may be taken by the officer and exonerates him from liability for discharging the witness when arrested."

Section 20. **Repealer.** Sections 26-1-107, 26-1-108, and 26-1-621, MCA, are repealed.

Approved March 14, 1983.

CHAPTER NO. 73

AN ACT TO REMOVE A STATUTORY CONFLICT REGARDING PREFERENCE RIGHTS FOR STATE LAND LEASES; AMENDING SECTION 77-6-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-205, MCA, is amended to read:

"77-6-205. Renewal leases. (1) A lessee of state land classed as agricultural, grazing, town lot or city lot who has paid all rentals due from him to the state is entitled to have his lease renewed for a 5- or 10-year period at any time within 30 days prior to its expiration if no other applications for lease of the land have been received 30 days prior to the expiration of his lease. The renewal shall be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. If other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

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(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. Such request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest and must be accompanied by a deposit equal to 20% of the competitive bid in the case of grazing lands and $1 per acre in the case of agricultural lands. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so inform the lessee and competitive bidder. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land."

Approved March 14, 1983.

CHAPTER NO. 74

AN ACT TO AUTHORIZE A POLITICAL SUBDIVISION TO ADOPT FLOODPLAIN MANAGEMENT REGULATIONS WITHIN AREAS SUBJECT TO SHEETFLOODING AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY; AMENDING SECTION 76-5-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-5-301, MCA, is amended to read:

"76-5-301. Land use regulations. (1) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land use regulations which meet or exceed the minimum standards of the board. *Such regulations may include, for the purposes of floodplain management only, floodplain management regulations within sheetflood areas as determined by the federal emergency management agency.*

(2) If within the 6-month period the political subdivision has failed to adopt the land use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under 76-5-202 through 76-5-205, and no artificial obstruction or nonconforming use may be established by any person within the designated floodplain or the designated floodway unless specifically authorized by the board.

(3) A political subdivision which has failed to adopt land use regulations which meet or exceed the minimum standards of the board within the 6-month period may subsequently adopt such regulations, and if

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approved by the board, they shall be effective within the designated floodplain or floodway and administered and enforced by the political subdivision.

(4) When necessary for compliance with federal flood insurance requirements, the board may shorten the 6-month period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks."

Approved March 14, 1983.

CHAPTER NO. 75

AN ACT EXEMPTING FROM THE COVERAGE OF TITLE 69, PUBLIC UTILITIES AND CARRIERS, CHAPTER 12, MOTOR CARRIERS, THE TRANSPORTING OF PROPERTY IN A CONTINUOUS MOVEMENT THAT INCLUDES TRANSPORTING BY AIR AS WELL AS BY MOTOR CARRIER; AMENDING SECTION 69-12-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) Except as provided in 69-12-201(1)(f), this chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

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(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances;

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill; *or*

(j) the transportation of property by motor carrier as part of a continuous movement if such property, prior or subsequent to such part of a continuous movement, has been or will be transported by an air carrier.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Approved March 14, 1983.

CHAPTER NO. 76

AN ACT TO PROVIDE THAT IN MAKING A DECISION ON AN APPLICATION FOR A CLASS D MOTOR CARRIER'S CERTIFICATE, THE PUBLIC SERVICE COMMISSION MAY CONSIDER THE PROMOTION OF COMPETITION; AMENDING SECTION 69-12-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-323, MCA, is amended to read:

"69-12-323. Decision on application. (1) The commission must issue, within 180 days from and after the date of the completed filing of said application, its finding, order, or decision on said application and the evidence presented in support thereof at the time of said hearing. The commission may extend the foregoing time for decision to a date requested by the applicant.

(2) *(a)* If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation

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agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

(b) For purposes of Class D certificates, a determination of public convenience and necessity may include a consideration of competition.

(3) The commission may issue the certificate as prayed for or issue it for the partial exercise only of the privilege sought and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. When a certificate has once been issued to a motor carrier as provided in this part, such certificate shall continue in force until terminated by the commission for cause as herein provided or until terminated by the owner's failure to comply with 69-12-402."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 14, 1983.

CHAPTER NO. 77

AN ACT TO ALLOW A FARM MUTUAL INSURER TO INVEST IN THE COMMON STOCK OF AN AFFILIATE DOMESTIC STOCK INSURER IN AN AMOUNT NOT TO EXCEED ONE-THIRD OF THE ASSETS OF THE FARM MUTUAL INSURER; AMENDING SECTION 33-4-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-4-403, MCA, is amended to read:

"33-4-403. Investments. (1) When so directed by a majority vote of its members present at a duly called and held meeting of members, the directors of a farm mutual insurer shall have power to invest the insurer's funds or any part thereof in any of the following:

(a) bonds or other securities issued by the United States government or by any agency thereof;

(b) bonds or other obligations the payment of the interest and principal of which is assumed or guaranteed by the United States government or any agency thereof;

(c) general obligation bonds or warrants of any state, county, or city, when recommended by the commissioner and approved by the department of commerce;

(d) loans secured by a first mortgage on real estate situated in the state of Montana but subject to the provisions of subsection (3) below;

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(e) common stock of a domestic insurer formed as an affiliate company to two or more farm mutual insurers for the purpose of offering companion insurance products that farm mutual insurers are prohibited from selling. Such investment may not exceed one-third of the assets of the farm mutual insurer.

(2) At the time of making any such investment the document evidencing the same must be stamped with the name of the insurer with the following notation printed or written thereon: "Negotiable only upon the order of the Board of Directors of .... (naming the insurer)."

(3) No real estate loan shall be for more than 60% of the appraised value of the real estate securing the loan, and the appraisal must have been made within 30 days prior to the date of the loan. No such loan shall be for a term longer than 10 years. The foregoing provisions shall not be deemed to prevent the renewal or extension of loans already made and shall not apply to real estate loans which are insured under the provisions of any act of the congress of the United States or to the making, extension, or renewal of any loans which are made under subchapter II of the act of congress known as the "Servicemen's Readjustment Act of 1944", or any amendment thereof or supplement thereto, as to any part of such loans; nor shall such provisions be deemed to prevent an insurer from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the same real estate or from accepting a second lien on real estate to secure the payment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when in the judgment of the insurer's board of directors such subsequent liens are necessary further to secure the payment of any debts and save the insurer from loss."

Approved March 15, 1983.

CHAPTER NO. 78

AN ACT TO REQUIRE THAT THE NECESSITY FOR ADMINISTRATIVE RULES BE DEMONSTRATED IN THE RULEMAKING RECORD OF ADMINISTRATIVE AGENCIES AND TO ALLOW THE ADMINISTRATIVE CODE COMMITTEE TO REVIEW THAT RECORD; AMENDING SECTIONS 2-4-305 AND 2-4-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. If substantial differences exist

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between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the Montana administrative register, the differences must be described in the statement of reasons for and against agency action. When no written or oral submissions have been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language.

(3) Each proposed and adopted rule shall include a citation to the specific grant of rulemaking authority pursuant to which it or any part thereof is adopted. In addition, each proposed and adopted rule shall include a citation to the specific section or sections in the Montana Code Annotated which the rule purports to implement.

(4) Each rule proposed and adopted by an agency implementing a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy, as used in the definition set forth in 2-4-102(10), and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. *Such reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.*

(7) No rule is valid unless adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption thereof is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases."

Section 2. Section 2-4-402, MCA, is amended to read:

"2-4-402. Powers of the committee — duty to review rules. (1) The committee shall review all proposed rules filed with the secretary of state.

(2) Rules proposed by the department of revenue may be reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act.

(3) The committee may:

(a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter."

Approved March 15, 1983.

CHAPTER NO. 79

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO GOVERNMENT; AMENDING SECTIONS 2-15-401, 7-2-2709, 7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-21-2114, 13-27-105, 15-17-305, 15-24-922, 15-31-509, 15-31-526, 15-57-109, 19-6-203, 19-7-202, 22-1-218, 46-30-301, MCA; AND REPEALING SECTIONS 2-15-1627, 7-13-2249, AND 15-31-542, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor, including all appointments made by him, with date of commission and names of appointees and predecessors;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

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(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;

(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(7) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

(8) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(9) file in his office descriptions of seals in use by the different state officers;

(10) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(11) report to the governor as prescribed in 2-7-102;

(12) register marks as provided in Title 30, chapter 13, part 3;

(13) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(14) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application."

Section 2. Section 7-2-2709, MCA, is amended to read:

"7-2-2709. Special election on question of abandonment and consolidation. (1) (a) *Within 14 days after transmittal* of the resolution provided for in 7-2-2707, *the boards of county commissioners of* the county in which the petition referred to in the resolution was filed and *of* each county designated in the resolution as a county to which any of the territory of the county, if abandoned and abolished, *would* be attached and made a part, *shall, in a joint meeting and by joint resolution of such boards, call a special election in all affected counties.*

(b) The *joint resolution* shall fix a day for holding the election in such counties, which shall be not less than 90 days or more than 120 days after the date of the *joint resolution* calling the same. *If* a general election will be held in the counties not less than 90 days or more than 120 days after the date of *the resolution provided for in 7-2-2707, the joint resolution* shall direct that the question be submitted to the registered electors of the counties at the general election. The *joint resolution* shall be filed in the

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office of the secretary of state, and copies thereof shall be transmitted to the election administrator of each of the counties in which the election is to be held.

(2) At the election there shall be submitted:

(a) to the registered electors of the county in which the petition was filed, the question of whether or not the county shall be abandoned and abolished and its territory attached to and made a part of the county designated and named for the purpose in the petition; and

(b) to the registered electors of each county named and designated in the resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished shall be attached and made a part if the county shall be so abandoned and abolished, the question of whether or not the part of the territory of the county, if abandoned and abolished, described in the resolution shall be attached to and become a part of the county."

Section 3. Section 7-3-219, MCA, is amended to read:

"**7-3-219. Type of election.** Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis."

Section 4. Section 7-3-314, MCA, is amended to read:

"**7-3-314. Type of election.** Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis."

Section 5. Section 7-3-413, MCA, is amended to read:

"**7-3-413. Type of election.** Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis."

Section 6. Section 7-3-513, MCA, is amended to read:

"**7-3-513. Type of election.** Local government elections shall be conducted on a:

(1) partisan basis; or

(2) nonpartisan basis."

Section 7. Section 7-21-2114, MCA, is amended to read:

"**7-21-2114. Investigation of possible licensing violations.** It shall be the duty of the board of county commissioners or the *department of administration*, when examining the treasurer's report, to investigate if

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any persons are doing business in the county without a license or if the amount of the license is sufficient. In either event the treasurer shall be officially notified."

Section 8. Section 13-27-105, MCA, is amended to read:

"13-27-105. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue, *other than a constitutional amendment,* approved by the people is effective on October 1 following approval. However, if the issue delegates rulemaking authority, it is effective no sooner than October 1 following approval.

(2) *A* constitutional amendment proposed *by initiative or* by the legislature and approved by the people is effective on *July* 1 following approval.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 13-27-503. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective October 1 following the election."

Section 9. Section 15-17-305, MCA, is amended to read:

"15-17-305. No sale unless directed by county commissioners. In case an assessment is made under 15-17-304 and the lands are not redeemed from a previous sale had under part 2, as provided by law, no sale must be had under the assessment authorized by 15-17-304 unless directed by the board *of county commissioners.*"

Section 10. Section 15-24-922, MCA, is amended to read:

"15-24-922. Department to prescribe levy. The department of revenue is hereby empowered and it is made its duty to annually prescribe the levy to be made against livestock of all classes for the purpose above indicated, and the *board of livestock has* the right to recommend to said department the amount of such levy."

Section 11. Section 15-31-509, MCA, is amended to read:

"15-31-509. Periods of limitation. (1) Except as otherwise provided in this section and in *15-31-544,* no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a

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return filed before the last day prescribed for filing shall be considered as filed on such last day. Where, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last:

(i) only so long as the suspension of the federal statute of limitation; or

(ii) until 1 year after any federal changes have become final or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by 15-31-506 until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event no claim is filed shall automatically be so extended."

Section 12. Section 15-31-526, MCA, is amended to read:

"15-31-526. Action by attorney general. Action may be brought by the attorney general of the state at the instance of the department, in the name of the state, to recover the amount of any taxes, penalties, and interest due under this chapter."

Section 13. Section 15-57-109, MCA, is amended to read:

"15-57-109. Employment of staff — disposal of license money. The department of revenue may employ such clerical and field assistance as necessary to carry out and administer the provisions of this chapter. All money collected under the provisions of this chapter shall be paid into the state treasury and credited to the general fund."

Section 14. Section 19-6-203, MCA, is amended to read:

"19-6-203. Administrative expenses. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the *account*.

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(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the *account* to the public employees' retirement system account in the agency fund."

Section 15. Section 19-7-202, MCA, is amended to read:

"19-7-202. Expenses of administration. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the *account.*

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the *account* to the public employees' retirement system account in the agency fund."

Section 16. Section 22-1-218, MCA, is amended to read:

"22-1-218. Exemptions. This part does not apply to officers of or affect the duties concerning publications distributed by:

(1) the state law library;

(2) the code commissioner in connection with his duties under Title 1, chapter 11, as amended; and

(3) the legislative council in connection with its duties under 5-11-203, as amended."

Section 17. Section 46-30-301, MCA, is amended to read:

"46-30-301. Arrest of accused without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year. When so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. Thereafter *his* answer shall be heard as if he had been arrested on a warrant."

Section 18. **Repealer.** Sections 2-15-1627, 7-13-2249, and 15-31-542, MCA, are repealed.

Approved March 15, 1983.

CHAPTER NO. 80

AN ACT TO RAISE THE DOLLAR AMOUNT OF THE BOND THAT NOTARIES PUBLIC MUST GIVE; AND TO MAKE IT CLEAR THAT THE GOVERNOR'S AUTHORITY TO ISSUE A COMMISSION IS DISCRETIONARY; AMENDING SECTION 1-5-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-5-405, MCA, is amended to read:

"1-5-405. Bond and commission. Each notary public must give an official bond in the sum of *$5,000. The* bond must be approved by the secretary of state. Upon the approval of *the* bond and the filing in the office

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of the secretary of state of the official oath of such notary public, the governor *may* issue a commission."

Approved March 15, 1983.

CHAPTER NO. 81

AN ACT REPEALING THE REQUIREMENT THAT A CONTRACTOR TAKE AN OATH OF DISCLOSURE BEFORE RECEIVING PAYMENT UNDER A CONTRACT WITH A MUNICIPALITY; REPEALING SECTION 7-5-4309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 7-5-4309, MCA, is repealed.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 15, 1983.

CHAPTER NO. 82

AN ACT GRANTING THE SHERIFF DISCRETION IN THE SEGREGATION OF PRISONERS CONFINED IN THE COUNTY JAIL; AND REQUIRING JUVENILES TO BE CONFINED UNDER CONDITIONS COMPLYING WITH OTHER PROVISIONS OF LAW; AMENDING SECTION 7-32-2221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2221, MCA, is amended to read:

"**7-32-2221. Segregation of prisoners.** (1) Each county jail must contain a sufficient number of rooms to allow *the sheriff to separately confine classes of prisoners as may be necessary to the security and safety of those prisoners and the jail.*

(2) Persons *who are violent, disturbed, or inebriated* must not be kept or put into the same room *with other prisoners*, nor shall male and female prisoners (except husband and wife) be kept or put into the same room.

(3) Juveniles may be confined only under conditions that comply with 41-5-306(2)."

Approved March 15, 1983.

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CHAPTER NO. 83

AN ACT TO PROVIDE THAT A PERSON APPOINTED TO A PUBLIC OFFICE WHOSE APPOINTMENT IS SUBJECT TO CONFIRMATION BY THE SENATE MAY SERVE AS A DE JURE OFFICER UPON APPOINTMENT, NOTWITHSTANDING THAT THE APPOINTMENT HAS NOT YET BEEN CONFIRMED; AMENDING SECTIONS 2-15-124 AND 2-16-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-124, MCA, is amended to read:

"2-15-124. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate *then meeting in regular session or next meeting in regular session following the appointment.* A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid

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$25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law."

Section 2. Section 2-16-213, MCA, is amended to read:

"2-16-213. Term of office — holdover — assumption of office. (1) Every office of which the duration is not fixed by law is held at the pleasure of the appointing power.

(2) Every officer must continue to discharge the duties of his office, although his term has expired, until his successor has qualified.

(3) Notwithstanding subsection (2), an appointee who is by law subject to confirmation by the senate may, upon expiration of or vacancy in the previous term, assume the office to which appointed and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate rejects the appointment, the office becomes vacant."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 15, 1983.

CHAPTER NO. 84

AN ACT TO GENERALLY REVISE AND CLARIFY LAWS RELATING TO BUSINESS AND LABOR; AMENDING SECTIONS 30-14-702, 33-25-103, 37-8-405, 39-51-2501, 39-51-3106, AND 70-23-609, MCA; AND REPEALING SECTIONS 37-33-101 THROUGH 37-33-104, 37-33-201 THROUGH 37-33-204, AND 37-33-301 THROUGH 37-33-312, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-702, MCA, is amended to read:

"30-14-702. Application. The provisions of 30-14-701 through 30-14-704 shall apply to any person, corporation, or other form of association now operating or which shall hereafter operate a mining or oil enterprise, the finances of which are derived in whole or in part from subscription and security sales to the public, and operating within the state of Montana. The provisions of 30-14-701 through 30-14-704 *do* not

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apply to any person, firm, corporation, or cooperative association holding a permit in good standing from the state *securities commissioner* or to securities listed on the New York stock exchange, Boston stock exchange, the board of trade of the city of Chicago, the Chicago stock exchange, or the New York curb exchange."

Section 2. Section 33-25-103, MCA, is amended to read:

"33-25-103. Policy based on title evidence. (1) No title insurance policy as to property in this state shall be issued by any insurer unless based upon evidence of the condition of title certified in writing as of the date of the policy by some person, firm, or corporation *engaged* in the title abstracting business in the county in which the property is located. This provision shall not apply as to title insurance policies issued upon the basis of an opinion of an attorney, duly authorized to practice law in this state, as to the condition of the title following a review by such attorney of pertinent title records or abstracts and issued through a licensed title insurance agent who was so licensed and was regularly procuring title insurance policies issued upon such basis up to January 1, 1961.

(2) An insurer issuing any policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured or assigns arising thereunder."

Section 3. Section 37-8-405, MCA, is amended to read:

"37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and

(3) meets other qualification requirements the board prescribes."

Section 4. Section 39-51-2501, MCA, is amended to read:

"39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Extended benefit period" means a period which:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period.

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(2) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of *its* reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (2)(a) shall be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(3) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in his eligibility period.

(5) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85, in his current benefit year that includes such week; provided, that for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits;

(b) his benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he is seeking such

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benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954."

Section 5. Section 39-51-3106, MCA, is amended to read:

"39-51-3106. Child support interception of unemployment benefits. (1) For purposes of this section, the following definitions apply:

(a) "Unemployment *benefits*" means any *benefits* payable under the Montana unemployment insurance law, including amounts payable by the *department* pursuant to an agreement under any federal law providing for *benefits*, assistance, or allowances with respect to unemployment.

(b) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act.

(c) "State or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan provided for in subsection (1)(b).

(2) An individual filing a new claim for unemployment *benefits* shall, at the time of filing the claim, disclose whether or not he owes child support obligations. If an individual discloses that he owes child support obligations and the individual is determined to be eligible for unemployment *benefits*, the *department* shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment *benefits*.

(3) The *department* shall deduct and withhold from any unemployment *benefits* payable to an individual owing child support obligations:

(a) the amount specified by the individual to the *department* to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the *department* under Section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be so deducted and withheld from such unemployment *benefits* pursuant to legal process, as that term is defined in Section 462(e) of the Social Security Act, properly served upon the *department*.

(4) The *department* shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local

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child support enforcement agency for the administrative costs incurred by the *department* under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment *benefits* and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations."

Section 6. Section 70-23-609, MCA, is amended to read:

"70-23-609. Foreclosure on unit — payment of rent — purchase of unit by manager. (1) In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent.

(2) The manager acting on behalf of the unit owners shall have power, unless prohibited by the declaration, to bid *on* the unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same."

Section 7. **Repealer.** Sections 37-33-101 through 37-33-104, 37-33-201 through 37-33-204, and 37-33-301 through 37-33-312, MCA, are repealed.

Approved March 15, 1983.

CHAPTER NO. 85

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 11, OF THE MONTANA CONSTITUTION TO ALLOW THE MONTANA SUPREME COURT TO DISCIPLINE A JUSTICE OR JUDGE FOR VIOLATION OF CANONS OF JUDICIAL ETHICS ADOPTED BY THE COURT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VII, section 11, of the Constitution of the State of Montana is amended to read:

"Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, *violation*

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of canons of judicial ethics adopted by the supreme court of the state of Montana, or habitual intemperance.

(4) The proceedings of the commission are confidential except as provided by statute."

Section 2. **Effective date.** If approved by the electors at the general election to be held November 8, 1983, this amendment shall become effective on that date.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 8, 1983, by printing on the ballot the full title of this act and the following:

☐ FOR amending the Montana Constitution to allow the Montana Supreme Court to discipline judges for violating rules of judicial ethics adopted by the court.

☐ AGAINST amending the Montana Constitution to allow the Montana Supreme Court to discipline judges for violating rules of judicial ethics adopted by the court.

Section 4. **Coordination instruction.** If HB 629, introduced in the 48th legislature, is passed and approved, the date "November 8, 1983" in sections 2 and 3 of this act is changed to "November 6, 1984".

CHAPTER NO. 86

AN ACT REFINING THE DEFINITION OF DEATH; AMENDING SECTION 50-22-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-22-101, MCA, is amended to read:

"50-22-101. Determination of death. *An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brainstem, is dead. A determination of death must be made in accordance with accepted medical standards.*"

Approved March 16, 1983.

CHAPTER NO. 87

AN ACT ESTABLISHING THE UNAUTHORIZED ACQUISITION OR TRANSFER OF FOOD STAMPS AS A CRIME AND PROVIDING PENALTIES THEREFOR; AND PROVIDING AN EFFECTIVE DATE OF JULY 1, 1983.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Unauthorized acquisition or transfer of food stamps.** (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he knowingly:

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(a) acquires, purchases, possesses, or uses any food stamp or coupon that he is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds $150, shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupon" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7. U.S.C. 2011 through 2029, or any similar public assistance program.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 45, chapter 6, part 3.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved March 16, 1983.

CHAPTER NO. 88

AN ACT TO PERMIT THE MONTANA HIGHWAY COMMISSION TO DELEGATE ITS AUTHORITY TO AWARD CONTRACTS TO THE DEPARTMENT OF HIGHWAYS AND TO UNITS OF LOCAL GOVERNMENT; AMENDING SECTION 60-2-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-111, MCA, is amended to read:

"60-2-111. Letting of contracts on state and federal-aid highways. *(1) Except as provided in subsection (2), all* contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under 7-14-4108 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government."

Approved March 16, 1983.

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CHAPTER NO. 89

AN ACT TO ALLOW A BOARD OF COUNTY COMMISSIONERS TO INITIATE AND ADOPT A RESOLUTION THAT CALLS FOR AN ELECTION ON THE QUESTION OF ISSUING COUNTY BONDS; AMENDING SECTIONS 7-7-2223 AND 7-7-2227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2223, MCA, is amended to read:

"7-7-2223. Election required for issuance of certain bonds. (1) County bonds for any purpose other than those enumerated in 7-7-2221 and 7-7-2311 may not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds is submitted to the registered electors of the county and approved as provided in 7-7-2237.

(2) No bond election may be called unless the board of county commissioners:

(a) initiates and unanimously adopts a resolution in accordance with the provisions of 7-7-2227(2); or

(b) receives a petition, delivered and certified by the election administrator, asking that such election be held and the question be submitted. The petition must be signed by at least 20% of the registered electors of the county."

Section 2. Section 7-7-2227, MCA, is amended to read:

"7-7-2227. Examination of petition — resolution calling for election. (1) Upon delivery of the certified petition, the board shall carefully examine the petition and make such other investigation as it may consider necessary. If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution *that contains the provisions of subsection (2) plus the essential facts in regard to the petition and its filing and presentation.*

(2) The resolution shall:

(a) recite the purpose or purposes for which the bonds are proposed to be issued;

(b) fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition;

(c) determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in 7-7-2206; and

(d) make provision for having the question submitted to the registered electors of the county at the next general election or at a special election which the board may call for that purpose.

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(3) Whenever a board of county commissioners initiates a resolution in accordance with the provisions of 7-7-2223, the resolution must contain the provisions of subsection (2)."

Approved March 16, 1983.

CHAPTER NO. 90

AN ACT TO EXPAND THE DEFINITION OF "HOUSING DEVELOPMENT" FOR PURPOSES OF PROGRAMS ADMINISTERED BY THE BOARD OF HOUSING; AMENDING SECTION 90-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-103, MCA, is amended to read:

"**90-6-103. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of housing created in 2-15-1814.

(2) "Bond" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by the board pursuant to this part.

(3) "Capital reserve account" means the capital reserve account provided for in 90-6-107.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Federally insured mortgage" means a mortgage loan for land development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality thereof or a commitment by the United States or a governmental agency or instrumentalities thereof to insure such a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality thereof.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more thereof.

(8) "Housing development" means *single-family homes, multifamily projects, housing for the elderly projects, nursing home projects, personal care projects, and* any work or undertaking financed in whole or in part under this part for the primary purpose of acquiring, constructing, or rehabilitating *such* accommodations for persons or families of lower income in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable in connection therewith, including but not limited

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to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities as the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs incurred in a housing development approved by the board as reasonable and necessary, including but not limited to:

(a) cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition, and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution, and financing of the housing development and the finding of an eligible mortgagee or mortgagees for the housing development;

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus, and similar facilities related to the real property;

(g) cost of land improvements, including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor;

(j) an allowance established by the board for working capital and contingency reserves and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) costs of other items, including tenant relocation, as the board determines to be reasonable and necessary for the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsors, nonprofit corporations, or other legal entities or any combination thereof that are:

(a) approved by the board;

(b) qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development;

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(c) subject to the rules of the board and other terms and conditions set forth in this part.

(11) "Lending institution" means any public or private entity or governmental agency approved by the board maintaining an office in this state and authorized by law to make or participate in making residential mortgages in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary to carry out this part.

(13) "Mortgage" means a mortgage deed, deed of trust, or other instrument which shall constitute a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time the mortgage is acquired, which does not expire for at least that number of years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest-bearing obligation secured by a mortgage on land and improvements in the state.

(15) "Nonprofit housing sponsor" means a housing cooperative formed under Title 35, chapter 15, or a nonprofit corporation formed under Title 35, chapter 2, restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary, and whose articles of incorporation provide in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization shall be used exclusively for housing development purposes and no part of the net income or net earnings of the organization shall inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain therefrom or seeking to eliminate or minimize losses in any transactions therewith, except that the limitations shall apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

(16) "Persons and families of lower income" means persons and families with insufficient personal or family income or other financial resources who require assistance under this part, as determined by the board, taking into consideration:

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(a) the amount of the total personal and family income, assets, and other financial resources available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families due to age or physical handicaps.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe, and sanitary housing or to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board."

Approved March 16, 1983.

CHAPTER NO. 91

AN ACT TO INCREASE FROM 60 DAYS TO 90 DAYS THE TIME IN WHICH A RETURN MUST BE MADE TO A WRIT OF EXECUTION ISSUED BY THE COUNTY TREASURER; AMENDING SECTION 25-13-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-404, MCA, is amended to read:

"25-13-404. Return of the execution. *(1) Except as provided in subsection (2),* execution may be made returnable, at any time not less than 10 or more than 60 days after its receipt by the sheriff, to the clerk of the court in which the judgment was rendered.

(2) The writ of execution issued by the county treasurer under 15-16-401 may be made returnable, at any time not less than 10 or more than 90 days after its receipt by the sheriff, to the county treasurer of the county in which the writ was issued."

Approved March 16, 1983.

CHAPTER NO. 92

AN ACT TO AUTHORIZE THE DEPARTMENT OF COMMERCE TO REPRESENT THE STATE OF MONTANA IN JUDICIAL AND ADMINISTRATIVE FORUMS ON PUBLIC TRANSPORTATION ISSUES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Department of commerce authorized to represent the state on public transportation issues.** The department of commerce may represent the state of Montana on any issue relating to any mode of public transportation in any judicial or administrative forum of this state, any other state, or the United States.

Approved March 16, 1983.

CHAPTER NO. 93

AN ACT REESTABLISHING THE BOARD OF OIL AND GAS CONSERVATION UNDER EXISTING STATUTORY AUTHORITY AND RULES; TRANSFERRING COLLECTION OF THE OIL AND GAS PRODUCERS PRIVILEGE AND LICENSE TAX FROM THE BOARD TO THE DEPARTMENT OF REVENUE; PROVIDING UNIFORM PENALTIES; PROVIDING THAT THE PRIVILEGE AND LICENSE TAX RATESETTING IS SUBJECT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; CLARIFYING THE BOARD'S REGULATORY AUTHORITY; AMENDING SECTIONS 2-8-103, 15-36-107, 82-11-111, 82-11-131 THROUGH 82-11-133, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Oil and Gas Conservation and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation the Legislative Audit Committee recommends that the Board of Oil and Gas Conservation be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of oil and gas conservation, created by 2-15-3303, is reestablished with its existing statutory authority and rules for 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

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(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of commerce, created by 2-15-1881;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of commerce, created by 2-15-1802;

(f) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(g) public service commission, department of public service regulation, created by 69-1-102;

(h) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(i) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

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(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates on July 1, 1989: board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303."

Section 3. Section 15-36-107, MCA, is amended to read:

"**15-36-107. Procedure to compute tax in absence of statement — penalty and interest.** If any such person shall fail, neglect, or refuse to file any statement required by 15-36-105 within the time therein required, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the number of barrels of petroleum and other mineral or crude oil or cubic feet of gas extracted and produced by such person in this state during such quarter and during each month thereof and the average value thereof during each such month and shall determine and fix the amount of the severance taxes due to the state from such person for such quarter and shall add to the amount of such severance taxes a penalty of 25% thereof plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance taxes and penalty. Interest shall be computed from the date the severance taxes were due to the date of payment. The department shall mail to the person required to file a quarterly statement and pay any severance tax, a letter setting forth the amount of severance tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made, a warrant for distraint may be filed. The 25% penalty herein provided may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-36-105 is provided to the department."

Section 4. Section 82-11-111, MCA, is amended to read:

"**82-11-111. Powers and duties of board.** (1) The board shall make such investigations as it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any

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action by the board under the authority granted by this chapter with respect thereto.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) *require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating* the disposal of salt water and oil field wastes;

(b) classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter.

(3) The board shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wildcat wells" and make such orders as in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate (daily or otherwise) of production of gas from that pool by any well then or thereafter drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well."

Section 5. Section 82-11-131, MCA, is amended to read:

"82-11-131. Privilege and license tax. (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter and expenses of the board, an operator or producer of oil and gas shall pay an assessment not to exceed 2/10 of 1% of the market value of each barrel of crude petroleum originally produced, saved and marketed, or stored within the state or exported from the state and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported therefrom.

(2) The board shall, by *rule adopted pursuant to the provisions of the Montana Administrative Procedure Act*, fix the amount of the assessment and may from time to time reduce or increase the amount thereof as the expenses chargeable against the oil and gas conservation fund may require. However, the assessment fixed by the board may not exceed the limits prescribed in this section. The amount of the assessment shall be a percentage factor (not to exceed 100%) of the rate set forth in subsection (1) above, and the same percentage factor shall be applied by the board in fixing the amount of the assessment on each barrel of crude production and each 10,000 cubic feet of natural gas mentioned in that subsection. A producer of the crude petroleum and natural gas shall pay the assessment on each

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barrel of crude petroleum and each 10,000 cubic feet of natural gas produced for himself, as well as for another, including a royalty holder, and the producer shall be reimbursed for the payments made on crude oil and natural gas produced for another in the same manner as he is reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for another under 15-23-607.

(3) The department of revenue shall collect the privilege and license tax assessment in the same manner as the oil and gas severance tax is collected under Title 15, chapter 36."

Section 6. Section 82-11-132, MCA, is amended to read:

"**82-11-132. Statements to treasurer and payment of tax.** (1) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of February, May, August, and November of each calendar year, render a true statement to the state treasurer, *the department of revenue, and the board,* duly signed and sworn to, of all crude petroleum produced and marketed by him in this state during the preceding quarter and containing such other information as the board may require and shall accompany the statement with the payment to the state treasurer of the assessment provided for in 82-11-131(1) for the period covered by the statement.

(2) Each producer of natural gas in the state shall render like statements to the state treasurer, *the department of revenue, and the board* of all natural gas produced and marketed by him in this state and shall make payment of the assessment provided for in 82-11-131(1) at such times and for such periods as may be prescribed by rule of the board.

(3) Any producer carrying on business at more than one place or location in this state may include all those places of business in one statement.

(4) The assessment imposed herein shall be due at the time the oil or natural gas is marketed. Oil or natural gas shall be deemed marketed when it is removed from the property from which it was produced."

Section 7. Section 82-11-133, MCA, is amended to read:

"**82-11-133. Penalty for late payment.** An assessment not paid within the time specified is delinquent, and a penalty of 25% thereof shall be added thereto, and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid. Upon request of the *department of revenue or the* board, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same."

Section 8. **Effective date.** This act is effective July 1, 1983.

Approved March 16, 1983.

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CHAPTER NO. 94

AN ACT AUTHORIZING THE BOARD OF PUBLIC EDUCATION TO ADOPT RULES FOR ISSUANCE OF DOCUMENTS CERTIFYING EQUIVALENCY OF COMPLETION OF SECONDARY EDUCATION; AMENDING SECTION 20-2-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-2-121, MCA, is amended to read:

"20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification, specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of state equalization aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(10) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with [section 2]; and

(11) perform any other duty prescribed from time to time by this title or any other act of the legislature."

Section 2. **Equivalency of completion of secondary education.** The superintendent of public instruction shall issue, in accordance with

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the policies of the board of public education, appropriate documentation certifying that an eligible applicant has satisfied requirements for equivalency of completion of secondary education. Equivalency of completion of secondary education must include satisfactory completion of a testing program or an external diploma program approved by the board of public education.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20 apply to section 2.

Approved March 16, 1983.

CHAPTER NO. 95

AN ACT AUTHORIZING THE BOARD OF PERSONNEL APPEALS TO INVESTIGATE AND DISMISS COMPLAINTS OF UNFAIR LABOR PRACTICES; AMENDING SECTION 39-31-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-405, MCA, is amended to read:

"39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board shall issue and cause to be served upon the person a copy of the complaint and *provide the person with an opportunity to respond to all charges. After receipt of responses from the charged party, an agent designated by the board for such purposes shall investigate the alleged unfair labor practice.*

(2) If, after the investigation, the agent designated by the board determines that the charge is without probable merit, the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within 10 days of receipt of the notice of intention to dismiss. If a review is requested, the board may uphold its decision to dismiss the complaint or, pursuant to subsection (3), schedule a hearing on the merits. If the board upholds its decision to dismiss the complaint, the dismissal becomes a final order of the board.

(3) If after the investigation or after the review provided for in subsection (2), the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and the party charged a notice of hearing before the board, a

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member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(4) If a hearing is to be held, the person *against* whom the charge is *filed* shall file an answer to the complaint."

Approved March 16, 1983.

CHAPTER NO. 96

AN ACT TO CLARIFY THE PROCEDURE FOR DEVELOPMENT OF HYDROELECTRIC POWER GENERATION AT APPROPRIATE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WATER PROJECTS TO AVOID FORFEITURE OF ANY NECESSARY FEDERAL LICENSE, PERMIT, OR EXEMPTION; AMENDING SECTION 85-1-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-502, MCA, is amended to read:

"85-1-502. Lease of sites to public utilities or electric cooperatives — first option. (1) If after completion of the feasibility study of a particular project the board determines that hydroelectric power generation at the project would be feasible and in the best interest of the people of the state of Montana, it shall publish notice and make the site available for lease for the purpose of small-scale hydroelectric power generation, pursuant to 85-1-502 through 85-1-508, *unless such action would result in the forfeiture of any necessary federal license, permit, or exemption, in which case the department may proceed under 85-1-509.*

(2) In issuing a notice of availability of a site for lease under this section, the board shall include in the notice any reasonable conditions it may find necessary in order to protect the interests of the state."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1983.

CHAPTER NO. 97

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO ALFALFA LEAF-CUTTING BEES; AMENDING SECTIONS 80-6-1102, 80-6-1103, 80-6-1105, 80-6-1107, AND 80-6-1108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-6-1102, MCA, is amended to read:

"80-6-1102. Definitions. As used in this part, the following definitions apply:

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(1) "Bee" means any stage in the life cycle of a bee of the species Megachile rotundata (F), commonly known as the alfalfa leaf-cutting bee.

(2) "Certification" means the process of analyzing bees and equipment by the department to determine whether they meet the required health standards.

(3) "Committee" means the alfalfa leaf-cutting bee advisory committee established in 2-15-3005.

(4) "Custom pollinator" means any person who has a contract to pollinate alfalfa seed crops on property that he does not own or control.

(5) "Department" means the department of agriculture established in 2-15-3001.

(6) "Equipment" means grooved boards, shelters, trays, incubators, cell removers, tumblers, and other apparatus used in rearing bees.

(7) "Nesting materials" means equipment, laminates, and other apparatus used in nesting bees.

(8) "Parasite" means an organism living in or on any stage of the alfalfa leaf-cutting bee obtaining nutriment from the body of the bee.

(9) "Pathogen" means an organism, parasitic or otherwise, that causes disease in the alfalfa leaf-cutting bee.

(10) "Person" means an individual, association, partnership, or corporation.

(11) "Wild trap" means to trap bees on property not owned by the trapper."

Section 2. Section 80-6-1103, MCA, is amended to read:

"80-6-1103. Department responsibilities — adoption of rules. (1) The department is responsible for the administration of this part.

(2) The department shall by rule adopt minimum standards for the presence of pathogens and parasites in bees to be certified, imported, and possessed or controlled in the state of Montana.

(3) The department may enter into agreements with other governmental agencies or private associations in carrying out the provisions of this part.

(4) In performing its duties under this part, the department may:

(a) enter upon any public or private premises to inspect and sample bees or equipment that may be diseased or contaminated by parasites;

(b) quarantine any bees or equipment found to be infected or contaminated with pathogens at a level exceeding certification standards;

(c) order the disinfection or destruction of any bees or equipment that is infected or contaminated with parasites or pathogens and that does not meet certification standards.

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(5) (a) Whenever the department has reasonable cause to believe a person is in possession of any diseased or parasitic bee or equipment or otherwise possesses any bee or equipment in violation of this part or rules adopted under it, the department may order a quarantine for not more than 30 days of the suspected bees or equipment and may require any person in possession of such bees or equipment to hold them under specified conditions until notified otherwise in writing by the department.

(b) The department shall release any quarantine or order to hold bees *upon the failure to detect disease in any official sample of bees, as provided by department rule, or on equipment and* upon a finding that the bees and equipment are possessed in compliance with this part."

Section 3. Section 80-6-1105, MCA, is amended to read:

"80-6-1105. Alfalfa leaf-cutting bees — inspection — certification — fees. (1) No person may import, possess, or control alfalfa leaf-cutting bees in the state of Montana unless the bees are certified annually, as provided in this section.

(2) To certify bees, a person must file a completed application form provided by the department together with the certification fee prescribed by the department. The applicant must provide at least the following:

(a) name and place of residence;

(b) the general location and number of bees to be registered; and

(c) other relevant information as may be required by department rule.

(3) After receipt of an application for certification, a sample of the total population of bees to be certified shall be selected by the department or its agent in a manner prescribed by the department. The sample shall be inspected for pathogens and parasites. If no pathogens or parasites in excess of certification standards are found, the sample shall be *certified as to the appropriate class.*

(4) When the department has in its possession a completed application form, a certification fee, and a report that the sample *meets certification standards,* it may issue a certificate for the bees.

(5) The department shall specify the date by which any applicant must apply for recertification the following year. Applications for *certification* received after the date specified shall be assessed a penalty equal to 10% of the applicable certification fee *but not exceeding $50.*"

Section 4. Section 80-6-1107, MCA, is amended to read:

"80-6-1107. Restrictions on importing bees and equipment. (1) No bee may be imported into the state of Montana except under the provisions of this section.

(2) Prior to the importation of any bee, the importer must file a completed application form as required in subsection (2) of 80-6-1105 and arrange an approximate date and time for inspection.

(3) Every imported bee must be shipped *to a storage facility designated by department rule for sampling purposes.* Prior to certification,

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each bee, *container, and piece of associated equipment must be quarantined at the designated storage facility.*

(4) No bee may be imported except in loose cells or as adults. No bee may be imported in a drilled board, soda straw, or other equipment that prevents adequate inspection of the bee.

(5) A representative sample of the population of bees imported shall be inspected as the basis for certification.

(6) No person may import used equipment or nesting materials.

(7) No bee may be certified unless all other requirements for certification provided in 80-6-1105 are met."

Section 5. Section 80-6-1108, MCA, is amended to read:

"80-6-1108. Restrictions on the rearing, moving, and trapping of bees. (1) No person may rear any bee in a *drilled board or a* nesting material from which samples of loose larval cells cannot readily be obtained.

(2) No person may move any quarantined bee or equipment except by special permit issued by the department.

(3) No person may wild trap or attempt to wild trap bees unless that person has been issued a permit for such activity in accordance with rules adopted by the department."

Section 6. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1983.

CHAPTER NO. 98

AN ACT TO CLARIFY PROJECT ELIGIBILITY FOR GRANTS AND LOANS FROM THE ALTERNATIVE ENERGY RESEARCH DEVELOPMENT AND DEMONSTRATION ACCOUNT; TO PROVIDE FOR RESEARCH, DEVELOPMENT, AND DEMONSTRATION OF ENERGY CONSERVATION; TO REMOVE THE PROHIBITION ON PRIVATE OWNERSHIP AND CONTROL OF RESEARCH INFORMATION; AMENDING SECTIONS 90-4-101 THROUGH 90-4-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-101, MCA, is amended to read:

"90-4-101. Purpose. The purposes of this part are to stimulate research, development, *and* demonstration *of energy conservation and* of energy sources which are harmonious with ecological stability by virtue of being renewable, thereby to lessen that reliance on nonrenewable energy sources which conflicts with the goal of long-range ecological stability and

to provide for the funding and administration of such research. Furthermore it is the purpose of this part *to stimulate the commercialization of alternative renewable energy and* to allow the department to make loans through financial institutions in Montana for *this purpose.*"

Section 2. Section 90-4-102, MCA, is amended to read:

"90-4-102. Definitions. As used in this part, the following definitions apply:

(1) "Alternative renewable energy source" means a form of energy or matter, such as solar energy, wind energy, or methane from solid waste, capable of being converted into forms of energy useful to mankind, and the technology necessary to make this conversion, when the source is not exhaustible in terms of this planet and when the source or the technology are not in general commercial use.

(2) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work through increases in efficiency of energy use, production, or distribution.

(3) "Person" means a natural person, corporation, partnership, or other business entity, association, trust, foundation, any educational or scientific institution, or any governmental unit.

(4) "Department" means the Montana department of natural resources and conservation."

Section 3. Section 90-4-103, MCA, is amended to read:

"90-4-103. Alternative energy and energy conservation research development and demonstration account established. There is within the earmarked revenue fund an alternative energy *and energy conservation* research development and demonstration account. Moneys are paid into this account under 15-35-108. The state treasurer shall draw warrants payable from this account upon order of the department."

Section 4. Section 90-4-104, MCA, is amended to read:

"90-4-104. General powers of department. The department may:

(1) employ a staff adequate to administer this part;

(2) retain professional consultants and advisors;

(3) adopt rules governing applications and granting of funds;

(4) adopt rules governing applications for and administration and awarding of loans;

(5) consider applications and award grants or loans, subject to the availability of funds and to the appropriation of such funds by the legislature, from the alternative energy *and energy conservation* research development and demonstration funds for projects that will further the purposes of this part;

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(6) appoint an alternative energy advisory committee composed of representatives of state agencies and citizen members with expertise in alternative energy *and energy conservation* matters. The appointment of any such advisory committee shall be in keeping with 2-15-122."

Section 5. Section 90-4-105, MCA, is amended to read:

"90-4-105. Applications for grants or loans. Any person may apply for a grant to enable him to research, develop, *or* demonstrate *energy conservation or* alternative renewable energy sources. *Any person may apply for a loan to commercialize alternative renewable energy sources.* The department shall prescribe the form for applications. Applicants shall describe the nature of their proposed investigations, including practical applications of the possible results and time requirements."

Section 6. Section 90-4-106, MCA, is amended to read:

"90-4-106. Criteria for grant or loan awards. The department may award grants or loans to applicants under 90-4-105 in accordance with the following criteria:

(1) A grant may cover a period exceeding 1 year, *provided that all funds for the grant must be encumbered or accrued from the program appropriation for the year the grant is authorized.*

(2) The department may give preference to projects which are also supported by funding from the federal government or other persons provided the projects are consistent with the other objectives of the department. The purpose of this preference is to use the alternative energy *and energy conservation* research development and demonstration account for matching moneys in order to support more substantial research or commercialization.

(3) The department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this shall not be interpreted to prohibit the department from awarding grants or loans to existing educational institutions.

(4) The department may give preference to research centers which make information available to individuals, small businesses, and small communities seeking the use of renewable energy sources *and energy conservation* in their homes, plants, places of business, and small communities.

(5) All information resulting from such research shall be made available to the public.

(6) The department may expend or commit available alternative energy *and energy conservation* research, development, and demonstration funds. The department may commit funds for demonstration purposes only when in its judgment such expenditures or commitments have good potential for producing savings of nonrenewable energy sources. The department may not commit funds for demonstration purposes when any of the following conditions are present:

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(a) previous commitments of a similar nature were not productive;

(b) a similar demonstration has been conducted within close geographic proximity of the geographic location of the proposed demonstration project;

(c) the proposed demonstration project would not further the purpose of this part."

Section 7. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1983.

CHAPTER NO. 99

AN ACT TO REVISE THE CULTURAL AND AESTHETIC GRANTS PROGRAM; ESTABLISHING A CULTURAL AND AESTHETIC PROJECTS ADVISORY COMMITTEE; PROVIDING THAT THE COMMITTEE SUBMIT RECOMMENDATIONS TO THE LEGISLATURE ON CULTURAL AND AESTHETIC GRANT PROPOSALS FUNDED FROM THE COAL SEVERANCE TAX TRUST FUND FOR PARKS AND CULTURAL PROJECTS; AMENDING SECTION 22-3-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-112, MCA, is amended to read:

"22-3-112. Cultural and aesthetic projects grants. (1) Any person, association, or representative of a governing unit seeking a grant for a cultural or aesthetic project from the income of the trust fund created in 15-35-108 must submit a grant proposal to the *cultural and aesthetic projects advisory committee, in care* of the Montana historical society, by *September* 1 of the year preceding the convening of a *regular* legislative session.

(2) *Grant* proposals *must* be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects."

Section 2. **Cultural and aesthetic projects advisory committee — terms and compensation.** (1) There is a cultural and aesthetic projects advisory committee.

(2) The committee consists of 16 members, appointed as follows:

(a) eight members appointed by the Montana historical society board of trustees; and

(b) eight members appointed by the Montana arts council.

(3) Members shall hold office for 4 years beginning January 1 following their appointment.

(4) A member may be removed by the appointing authority.

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(5) All vacancies shall be filled by the original appointing authority.

(6) The committee shall elect a chairman and vice-chairman.

(7) Members of the committee are entitled to compensation of $25 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at a committee meeting.

Section 3. **Advisory committee — powers and duties.** (1) The cultural and aesthetic projects advisory committee shall review all proposals for cultural and aesthetic project grants before they are submitted to the legislature.

(2) Consistent with the rules adopted in accordance with [section 5], the committee shall make recommendations to the legislature on each proposal submitted to the committee.

(3) The committee's recommendations to the legislature are advisory only.

(4) The committee shall present its recommendations to the appropriations committee of the legislature by the 15th day of any regular legislative session.

Section 4. **Cultural and aesthetic project appropriations — administration.** (1) The legislature must appropriate funds from the income of the trust fund created in 15-35-108(2)(h) before any grant for a cultural or aesthetic project is awarded.

(2) Costs incurred by the Montana arts council for accounting, correspondence, project visits, and solicitation of proposals related to cultural and aesthetic project grants and the costs of the advisory committee established in [section 2] shall be paid from appropriations from the income of the trust fund.

(3) Grant proposals are heard by the legislative appropriations subcommittee that hears the budget requests of the Montana arts council and the Montana historical society.

(4) Grant proposals approved by the legislature are administered by the Montana arts council.

Section 5. **Rulemaking authority.** The Montana historical society and the Montana arts council shall adopt rules that specify the criteria the advisory committee shall use when evaluating and making recommendations on cultural and aesthetic grant proposals submitted to the legislature.

Section 6. **Initial appointments.** The initial appointments made under the provisions of [section 2] shall be staggered in the following manner:

(1) Two of the members appointed by the Montana historical society and four of the members appointed by the Montana arts council shall serve 2-year terms.

(2) Two of the members appointed by the Montana historical society and two of the members appointed by the Montana arts council shall serve 3-year terms.

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(3) Four of the members appointed by the Montana historical society and two of the members appointed by the Montana arts council shall serve 4-year terms.

Approved March 16, 1983.

CHAPTER NO. 100

AN ACT TO CLARIFY WHEN CERTAIN TAXES ARE TO BE TRANSMITTED TO THE STATE TREASURER; AMENDING SECTION 15-24-925, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-925, MCA, is amended to read:

"15-24-925. Transmission of taxes from county to state treasurer. The taxes levied and the money collected pursuant to the provisions of 15-24-923 shall be transmitted with other taxes for state purposes to the state treasury by the county treasurer of each county, *as provided in 15-1-504. The* county treasurer shall designate the amount received from the tax levied on sheep and the amount received from the tax levied on all other livestock and shall specify said separate amounts in his report to the state treasurer. Such money, when received by the state treasurer, shall be placed to the credit of the funds as provided in 15-24-924."

Approved March 16, 1983.

CHAPTER NO. 101

AN ACT TO CLARIFY THAT A LOCAL HEALTH OFFICER IS APPOINTED BY A LOCAL HEALTH BOARD RATHER THAN COUNTY OR CITY OFFICERS; AMENDING SECTION 50-2-117, MCA, TO MAKE IT CONSISTENT WITH THE OTHER APPLICABLE CODE SECTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-2-117, MCA, is amended to read:

"50-2-117. Appointment of local health officer by department when not made by local health board. (1) If *a local health board does* not appoint a health officer, the department may appoint a health officer 30 days after notification in writing has been given to the *local health board.*

(2) A health officer appointed by the department has the same authority as a health officer appointed by a local *health* board."

Approved March 16, 1983.

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CHAPTER NO. 102

AN ACT TO CLARIFY THAT THE SCHOOL IMMUNIZATION REQUIREMENTS MUST BE MET AT THE TIME A PERSON COMMENCES SCHOOL ATTENDANCE RATHER THAN THE TIME OF ENROLLMENT; AMENDING SECTIONS 20-5-403 THROUGH 20-5-405 AND 20-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-403, MCA, is amended to read:

"20-5-403. Immunization required — grace period for transfers. (1) *The* governing authority *of* any school *may not allow any person to commence attendance as a pupil* unless the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) qualifies for conditional *attendance*;

(c) files for an exemption; or

(d) is a pupil transferring from another school district, in which case the provisions of subsection (2) apply.

(2) A person who transfers from one school district to another has 30 calendar days after commencement of attendance at the school to which he or she transfers to either complete immunization as specified in subsection (1)(a), commence immunization in the manner required by 20-5-404, or file for an exemption. If none of the foregoing actions is taken within 30 days, the transfer pupil is prohibited from further attendance until such action is taken."

Section 2. Section 20-5-404, MCA, is amended to read:

"20-5-404. Conditional attendance. *The governing authority of a school may allow the commencement of attendance in school by a* person who has not been immunized against each disease listed in 20-5-403 *if that person* has received one or more doses of polio, measles (rubeola), rubella, diphtheria, pertussis, and tetanus vaccine, except that pertussis vaccine is not required for a person 7 years of age or older."

Section 3. Section 20-5-405, MCA, is amended to read:

"20-5-405. Personal, religious, or medical exemption. (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking *to attend school*, or the person seeking *to attend school*, if an adult, signs and files with the governing authority a written statement on a form prescribed by the department stating that immunization is contrary to the personal or religious beliefs of the signer, immunization of the person seeking *to attend school* may not be required

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prior to *commencement of attendance* in any school. The statement must be maintained as part of the person's immunization records.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking *to attend school*, or the person seeking *to attend school*, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking *to attend school* or medical circumstances relating to him indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances which contraindicate immunization, he is exempt from the requirements of this part to the extent indicated by the physician's statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to such disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease. The exclusion period may not exceed 30 calendar days."

Section 4. Section 20-5-408, MCA, is amended to read:

"20-5-408. Enforcement. (1) The governing authority of any school shall prohibit from further attendance any pupil *allowed to attend* conditionally who has failed to obtain the immunizations required by 20-5-403(1) within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) Each governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department.

(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school."

Section 5. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** This act is effective July 1, 1983.

Approved March 16, 1983.

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CHAPTER NO. 103

AN ACT TO PERMIT A CONSUMER LOAN LICENSEE TO SELL ITS BUSINESS AND ASSETS TO CERTAIN FINANCIAL INSTITUTIONS NOT LICENSED UNDER THE MONTANA CONSUMER LOAN ACT; AMENDING SECTION 32-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in amounts of $25,000 or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, which in the aggregate are greater than those provided by 31-1-107(1), except as provided in and authorized by this chapter. *Except as provided in subsection (2),* a person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, or a person engaged in business as a licensed pawnbroker or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

(4) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.

(5) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

Approved March 16, 1983.

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CHAPTER NO. 104

AN ACT TO REPEAL SECTION 60-2-302, MCA, WHICH REQUIRES 24-HOUR CHECKING STATIONS ON THE MAJOR HIGHWAYS ENTERING THE STATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 60-2-302, MCA, is repealed.

Approved March 16, 1983.

CHAPTER NO. 105

AN ACT REQUIRING THAT CLASSIFICATION AND APPRAISAL NOTICES BE SENT TO PROPERTY OWNERS ONLY WHEN CERTAIN CHANGES PERTAINING TO LAND OR IMPROVEMENTS HAVE BEEN MADE; AMENDING SECTION 15-7-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) It shall be the duty of the department of revenue to cause to be mailed to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon *only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:*

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) If the owner of any land and improvements is dissatisfied with the appraisal or classification of his land or improvements, he may submit his objection in writing to the department's agent. The department shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing. Thereafter, the department shall determine the true and correct appraisal and classification of such land or improvements and forthwith notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When so determined, the land shall be classified and improvements appraised in the manner ordered by the department.

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(3) Whether a hearing as provided in subsection (2) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted his objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(4) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make such records available for inspection during regular office hours.

(5) If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the proper court or courts."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1983.

CHAPTER NO. 106

AN ACT PROVIDING THAT A CHALLENGE FOR CAUSE TO A JUROR MAY NOT BE TAKEN BECAUSE OF A DEBTOR-CREDITOR RELATIONSHIP WHEN THAT RELATIONSHIP ARISES SOLELY BECAUSE A PROSPECTIVE JUROR IS A DEPOSITOR OF FUNDS IN A BANK OR SIMILAR FINANCIAL INSTITUTION; AMENDING SECTION 25-7-223, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-7-223, MCA, is amended to read:

"25-7-223. Challenges to jurors for cause. Challenges for cause may be taken on one or more of the following grounds:

(1) a want of any of the qualifications prescribed by this code to render a person competent as a juror;

(2) being the spouse of or related to a party by consanguinity or affinity within the sixth degree;

(3) standing in the relation of guardian and ward, debtor and creditor, employer and employee, or principal and agent to either party or being a partner in business with either party or surety on any bond or obligation for either party. However, a challenge for cause may not be taken because of debtor and creditor relation when the same arises solely:

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(a) by reason of current bills of gas, water, electricity, or telephone; *or*

(b) because a prospective juror is a depositor of funds with a bank, savings and loan institution, credit union, or similar financial institution.

(4) having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

(5) interest on the part of the juror in the event of the action or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation;

(6) having an unqualified opinion or belief as to the merits of the action;

(7) the existence of a state of mind in the juror evincing enmity against or bias in favor of either party."

Approved March 16, 1983.

CHAPTER NO. 107

AN ACT ALLOWING OFFICERS OF THE UNITED STATES CUSTOMS SERVICE OR IMMIGRATION AND NATURALIZATION SERVICE TO MAKE ARRESTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Arrest by officer of the United States customs service or immigration and naturalization service.** An officer of the United States customs service or immigration and naturalization service may make an arrest without a warrant if the officer is on duty and one or more of the following situations exist:

(1) A person commits or attempts to commit an offense in the officer's presence.

(2) The officer believes on reasonable grounds that the person is committing an offense or that the person committed an offense and the circumstances require his immediate arrest.

(3) The officer believes on reasonable grounds that a warrant for the person's arrest has been issued in this state.

(4) The officer believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 46, chapter 6, and the provisions of Title 46 apply to section 1.

Approved March 16, 1983.

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CHAPTER NO. 108

AN ACT PROVIDING THAT AN ACTION BROUGHT IN CITY COURT FOR VIOLATION OF A STATE LAW MAY BE BROUGHT IN THE NAME OF THE CITY OR TOWN; AMENDING SECTION 3-11-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-11-302, MCA, is amended to read:

"3-11-302. Who named as plaintiff. (1) An action brought for violation of a city or town ordinance *must* be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) An action brought for violation of a state law within the city or town *may* be brought *either* in the name of the state of Montana as the plaintiff *or in the name of the city or town as the plaintiff* and *must be brought* against the accused as the defendant."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 16, 1983.

CHAPTER NO. 109

AN ACT EXCEPTING CERTAIN SAFETY DEVICES FROM THE MEASUREMENT OF VEHICLE WIDTH; AMENDING SECTION 61-10-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-102, MCA, is amended to read:

"61-10-102. Width. (1) No vehicle, including a bus, unloaded or with load, may have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) This restriction does not apply to an implement of husbandry or a vehicle used for hauling hay, moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle has a width in excess of 12 feet, it shall be preceded by flagman escorts for the purpose of warning other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width which are used in farming operations. The rear of the implement of husbandry or vehicle used for hauling hay shall properly display lights which meet the standard

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requirements of 61-9-219. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flagman escorts.

(3) A safety device that the highway patrol division determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1)."

Approved March 16, 1983.

CHAPTER NO. 110

AN ACT TO REMOVE THE STATUTORY SPECIFICATIONS CONCERNING ENVELOPES IN WHICH BALLOTS ARE MAILED TO ELECTORS IN THE UNITED STATES SERVICE; PROVIDING THAT SUCH SPECIFICATIONS BE PRESCRIBED BY THE SECRETARY OF STATE CONSISTENT WITH FEDERAL REGULATIONS; AMENDING SECTION 13-13-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-214, MCA, is amended to read:

"**13-13-214. Mailing ballot to elector.** (1) As soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom he has received a valid application whatever official ballots are necessary. Ballots shall be sent immediately to electors submitting valid requests after the official ballots are printed.

(2) The election administrator shall enclose with the ballots a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state shall be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots sent to an absentee elector as provided in 13-13-116.

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face *such information and graphics and be of such color as may be prescribed by the secretary of state consistent with the regulations established by the federal election commission, U.S. postal service, or other federal agency.*

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so it can be identified as being used by any one elector.

(6) Instructions for voting shall be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or

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types of writing instruments which may be used to mark the absentee ballot.

(7) The return envelope shall be self-addressed to the election administrator."

Approved March 16, 1983.

CHAPTER NO. 111

AN ACT GIVING THE DEPARTMENT OF LABOR AND INDUSTRY DISCRETION IN WHETHER TO INITIATE A CIVIL SUIT TO COLLECT UNEMPLOYMENT INSURANCE CONTRIBUTIONS; AMENDING SECTION 39-51-1303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-1303, MCA, is amended to read:

"39-51-1303. Collection of unpaid contributions by civil action. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, *the department may in its discretion initiate a* civil action in the name of the Montana department of labor and industry *to collect the amount due*, and the employer adjudged in default shall pay the costs of such action.

(2) Civil actions brought under this section to collect contributions or interest thereon from an employer must be heard by the court at the earliest possible date and are entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

(3) An action for the collection of contributions due must be brought within 5 years after the due date of such contributions or it is barred."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 17, 1983.

CHAPTER NO. 112

AN ACT TO SPECIFICALLY PROVIDE FOR INTEREST TO BE ASSESSED ON THE MINES NET PROCEEDS AND GROSS PROCEEDS TAXES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Interest.** If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-602, 15-23-701, or 15-23-802, the department shall inform its agents at the county level of

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such determination, and if any additional tax is due, there must be added thereto until paid in full interest at the rate of 1% a month or fraction thereof from the date the original tax was due and payable. In no instance will a taxpayer subject to imposition of interest pursuant to this section be also subject to the penalty and interest provisions contained in 15-16-102.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 23, part 1, and the provisions of Title 15, chapter 23, part 1, apply to section 1.

Approved March 17, 1983.

CHAPTER NO. 113

AN ACT TO PROVIDE THAT A PERSON WHO IS EMPLOYED BY A COUNTY OR MUNICIPALITY MAY DESIGNATE A PERSON TO CLAIM ANY WARRANTS OR PAYCHECKS DUE THE EMPLOYEE ON THE DEATH OF SUCH EMPLOYEE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Designation of person to receive decedent's warrants or paychecks — reissuance.** Any person employed by a county may file with his appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants or paychecks from the county clerk, and on sufficient proof of identity, the county clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person.

Section 2. **Designation of person to receive decedent's warrants or paychecks — reissuance.** Any person employed by a municipality may file with his appointing power a designation of a person who, notwithstanding any other provision of law, is entitled, on the death of the employee, to receive all warrants or paychecks that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants or paychecks from the city treasurer or town clerk, whichever is applicable, and on sufficient proof of identity, the city treasurer or town clerk shall reissue the warrant or paycheck in the name of the designated person and deliver the warrant or paycheck to the designated person.

Approved March 17, 1983.

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CHAPTER NO. 114

AN ACT TO TRANSFER THE STATE INFORMATION AND RESEARCH SYSTEM AND ITS FUNCTIONS FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF COMMERCE; TO CHANGE THE NAME AND CLARIFY THE RESPONSIBILITIES OF THE STATE RESEARCH AND INFORMATION SYSTEM; AMENDING SECTIONS 7-1-4121, 15-36-112, AND 90-1-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4121, MCA, is amended to read:

"7-1-4121. General definitions. As used in 7-1-4121 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations thereon.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity which incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of

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the clerk of the governing body where one is appointed, carries out his duties.

(11) "Officer" means a person holding a position with a municipality which is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of *commerce*.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(3).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision thereof.

(19) "Public property" means any and all property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

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(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities."

Section 2. Section 15-36-112, MCA, is amended to read:

"15-36-112. Disposition of oil and gas severance taxes. (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each county.

(2) The severance taxes collected under this chapter are allocated as follows:

(a) the amount, if any, by which the tax collected from within a county for any fiscal year exceeds the total amount collected from within that county for the previous fiscal year, by reason of increased production and not because of increase in or elimination of federal price ceilings on oil and gas, is allocated to the general fund of the county for distribution as provided in subsection (3);

(b) any amount not allocated to the county under subsection (2)(a) is allocated to the state general fund.

(3) (a) The county treasurer shall distribute the money received under this section to the county and to all the incorporated cities and towns within the county in the following manner. The county receives the available money multiplied by the ratio of the rural population to the county population. Each incorporated municipality receives the available money multiplied by the ratio of the population of the incorporated municipality to the county population. The rural population is that population of the county living outside the boundaries of an incorporated municipality. Population shall be based on the most recent figures as determined by the department of *commerce.*

(b) The money distributed under this subsection may be used for any purpose as determined by the governing body of the county, city, or town."

Section 3. Section 90-1-109, MCA, is amended to read:

"90-1-109. State census and economic information center. The department of *commerce* shall, in cooperation with other state, *federal,* and local *agencies,* establish and maintain a central depository of information, including computer-retrievable files, concerning the significant characteristics of the state, its people, economy, land, and physical characteristics. The department shall analyze and disseminate such information to state, *federal,* and local agencies and *to* the general public."

Section 4. **Effective date.** This act is effective July 1, 1983.

Approved March 17, 1983.

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CHAPTER NO. 115

AN ACT TO GENERALLY REVISE AND CLARIFY THE LIGHT VEHICLE FEE STATUTES; TO PROVIDE THAT THE AMOUNT OF THE FEE FOR LIGHT VEHICLES BE A WHOLE DOLLAR AMOUNT; TO CLARIFY THE FEE CATEGORY THAT APPLIES TO 8-YEAR-OLD VEHICLES; AND TO PROVIDE CLARIFICATION OF LIGHT VEHICLES ELIGIBLE FOR REIMBURSEMENT; AMENDING SECTIONS 61-3-533 AND 61-3-536, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-533, MCA, is amended to read:

"61-3-533. Schedule of fees for automobiles and light trucks. (1) Except as provided in subsection (3), the following schedule, based on vehicle age and weight, is used to determine the fee imposed by 61-3-532:

Vehicle Age	Weight	
	2,850 pounds or less	More than 2,850 pounds
Less than or equal to 4 years	$70	$90
More than 4 years and less than 8 years	40	50
8 years *old and over*	10	15

(2) *(a)* The fee for a light vehicle is *determined by:*

(i) multiplying the appropriate dollar amount from the table in subsection (1) by the ratio of the PCE for the second quarter of the year prior to the year of licensing to the PCE for the second quarter of 1981*; and*

(ii) rounding the product thus obtained to the nearest whole dollar amount.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the United States department of commerce.

(3) The light vehicle license fee for disabled veterans qualifying under the provisions of 10-2-301 through 10-2-304 is $5."

Section 2. Section 61-3-536, MCA, is amended to read:

"61-3-536. State aid for local government. (1) Each county treasurer shall compute:

(a) the total amount received during the period from January 1, 1981, to December 31, 1981, for property taxes on automobiles and trucks having a rated capacity of three-quarters of a ton or less, denoted CT;

(b) the total amount that would have been received during the same period if the license fee system had been in effect, denoted CF; and

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(c) the number of light vehicles registered in the county on December 31, 1981, denoted NC.

(2) The three quantities, CT, CF, and NC, shall be certified to the department of revenue by February 1, 1982. The department shall compute for each county a quantity called county revenue loss, denoted CRL, and county loss per vehicle, denoted CLV, and defined as follows:

(a) CRL = larger of:

(i) 0; or

(ii) CT - CF;

(b) CLV = CRL/NC.

(3) In order to be eligible for reimbursement payment, a light vehicle must be such that it would have been subject to ad valorem tax if it had been registered prior to January 1, 1982.

(4) Prior to February 1 of year denoted Y, the county treasurer shall determine and certify to the department the number of *eligible* light vehicles registered in the county on December 31 of the prior year, denoted NC(Y).

(5) On March 1 of year Y, the department shall transmit to each county treasurer a warrant in the amount of CLV x NC(Y).

(6) Upon receipt of the payment provided for in subsection *(5)*, the county treasurer shall credit the payment to a motor vehicle suspense fund and, at some time between March 15 and March 30, shall distribute the payment in the same manner as funds are distributed to the taxing jurisdictions as provided in 61-3-509."

Approved March 17, 1983.

CHAPTER NO. 116

AN ACT ALTERING THE REQUIREMENTS FOR PLUGGING SEISMIC SHOT HOLES; REQUIRING THE BOARD OF OIL AND GAS CONSERVATION TO ADOPT RULES GOVERNING GEOPHYSICAL EXPLORATION; AMENDING SECTIONS 82-1-101 AND 82-1-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1-101, MCA, is amended to read:

"82-1-101. Persons required to comply. *(1)* A person, firm, or corporation operating individually or through agents within the state of Montana for the purpose of geophysical exploration in which exploration the seismograph is utilized along with explosives for the determination of geophysical data for any purpose whatsoever, and which person, firm, or corporation either through its own employees or by hiring the services of

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others operates "seismograph crews", as the term is generally known, shall comply with the following provisions of this part; provided, however, that compliance with the provisions of this part by a seismograph crew or its employer shall constitute compliance herewith by that person, firm, or corporation who has engaged the services of such crew or its employer as an independent contractor insofar as the geophysical operations of such crew are concerned.

(2) The board of oil and gas conservation shall adopt rules requiring adequate identification of geophysical exploration crews operating in this state and designating areas where geophysical exploration and activities may not be allowed."

Section 2. Section 82-1-104, MCA, is amended to read:

"82-1-104. Surety bond — restoration of surface. (1) A person, firm, or corporation desiring to engage in such geophysical exploration shall also file with the secretary of state a good and sufficient surety bond in the amount of $10,000 for a single such geophysical crew or a blanket surety bond in the amount of $25,000 for all such geophysical crews operating within the state for such person, firm, or corporation, which bond shall indemnify the owners of property within this state against such physical damages to such property as may arise as the result of such geophysical exploration.

(2) Unless otherwise agreed as between the owner of the surface and such person, firm, or corporation, it shall be the obligation of such person, firm, or corporation upon completion of exploration to plug all "shot holes" in such a manner as shall be specified by the board of oil and gas conservation to contain any water within its native strata by filling the hole with bentonite mud or cement as required to contain the water and capping the same *in a manner and with a material specified by the board*, the top of which *cap* shall be *of sufficient depth* below the surface of the land *to allow cultivation.* The portion of the hole above the cap shall be filled with native material. The person, firm, or corporation shall also restore the surface around the same as near as practicable to its original condition.

(3) The bond shall remain on file with the secretary of state so long as the exploration is carried on or engaged in, plus an additional 5 years thereafter; provided, however, that the aggregate liability of the surety shall in no event exceed the amount of said bond. Upon the filing of such bond, said secretary of state shall issue to the person, firm, or corporation a certificate showing that such bond has been filed and showing the name of the designated resident agent within the state for service of process for such person, firm, or corporation."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 17, 1983.

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CHAPTER NO. 117

AN ACT AMENDING SECTION 2-15-1009, MCA, TO ADD A RETIRED PUBLIC EMPLOYEE TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1009, MCA, is amended to read:

"2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of *six* members appointed by the governor. The members are:

(a) three public employees who are *active* members of a public retirement system (not more than one of these members may be an employee of the same department);

(b) one retired public employee who is an inactive member of the public employees' retirement system; and

(c) two members at large.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall be paid their travel expenses as provided for in 2-18-501 through 2-18-503, as amended, and members of the board who are not *active* members of the public retirement system shall be entitled, in addition to travel expenses, to compensation as established for a quasi-judicial board in 2-15-124."

Section 2. **Initial appointment of retired public employee.** The governor shall appoint the retired public employee provided for in 2-15-1009 within 30 days after the effective date of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 17, 1983.

CHAPTER NO. 118

AN ACT TO REMOVE THE REQUIREMENT THAT A JOINT INCOME TAX RETURN MUST BE FILED BY A MARRIED INDIVIDUAL IF THAT INDIVIDUAL CLAIMS A DEDUCTION FOR CHILD AND DEPENDENT CARE EXPENSES; PROVIDING FOR ALLOCATION OF THE DEDUCTION BETWEEN SPOUSES; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

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(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974, *except that:*

(a) the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse;

(b) the limitation set forth in section 214(e)(1) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, does not apply when the taxpayers file separately on the same form; and

(c) the deduction for child and dependent care expenses shall be divided equally between the taxpayers.

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) light vehicle license fees, as provided by 61-3-532, paid during the taxable year."

Section 2. **Applicability.** This act applies to taxable years beginning after December 31, 1982.

Approved March 17, 1983.

CHAPTER NO. 119

AN ACT ALLOWING GAME WARDENS TO QUALIFY ACTIVE SERVICE IN THE ARMED FORCES FOR RETIREMENT PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Election to qualify military service for full credit.** (1) A member with 15 years or more of state service qualified under this chapter may, at any time prior to retirement, make a written election with

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the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit for this service pursuant to 19-8-304.

(2) To qualify this service he must contribute to the retirement fund the actuarial cost of granting the service determined by the board, based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more years of military service than he has years of creditable state service in excess of 15 years.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 8, part 3, and the provisions of Title 19, chapter 8, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 17, 1983.

CHAPTER NO. 120

AN ACT ALLOWING THE COUNTY GOVERNING BODY TO APPOINT A BOARD OF ELECTION JUDGES TO BE DESIGNATED AS A COUNTING BOARD FOR ABSENTEE BALLOTS; PRESCRIBING PROCEDURES FOR A COUNTING BOARD FOR ABSENTEE BALLOTS; ELIMINATING THE PROVISION THAT ALLOWS AN ELECTOR WHO HAS VOTED BY ABSENTEE BALLOT TO VOTE IN PERSON ON ELECTION DAY UNLESS THERE HAS BEEN AN ERROR IN PRINTING ABSENTEE BALLOTS OR AN ABSENTEE BALLOT WAS DESTROYED; AMENDING SECTIONS 13-4-101, 13-13-204, 13-13-233, AND 13-13-243, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-4-101, MCA, is amended to read:

"13-4-101. Appointment of election judges — other boards of election judges. (1) At least 30 days before the primary election in even-numbered years, the county governing body shall appoint 3 or more election judges for each precinct, one of whom shall be designated chief judge.

(2) A board of election judges, designated as a counting board, may be appointed in any precinct if recommended by the election administrator.

(3) A board of election judges, designated as a counting board for absentee ballots, may be appointed to count all absentee ballots for all precincts if recommended by the election administrator."

Section 2. Section 13-13-204, MCA, is amended to read:

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"13-13-204. Authority to vote in person — printing error or ballot destroyed — effect of absentee elector's death. (1) If an elector has voted by absentee ballot but *the absentee ballot contains printing errors or omissions or if the absentee ballot was destroyed,* the elector may vote in person *in any manner* at his polling place.

(2) If an elector votes by absentee ballot and dies between the time of balloting and election day, his ballot does not count."

Section 3. Section 13-13-233, MCA, is amended to read:

"13-13-233. Issue and record of absentee ballots — certificate. (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The election administrator shall deliver to the chief election judges to whom the ballots are delivered a certificate stating:

(a) the number of absentee ballots delivered as well as those marked before him;

(b) the number of ballots retained for late absentee voting; and

(c) the names of the electors to whom such ballots were delivered or by whom they have been marked if marked before him.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3)."

Section 4. Section 13-13-243, MCA, is amended to read:

"13-13-243. Rejected absentee ballots. (1) The rejected ballots, the applications, and all envelopes shall be enclosed in an envelope and sealed, and the judges shall write on the envelope "rejected ballot(s) of absentee elector" (writing in the elector's name).

(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204 *must* be marked "voted in person" and initialed by a majority of the election judges.

(3) The unopened absentee ballot envelope of an elector who dies before election day shall be marked "died before election day" and initialed by a majority of the election judges if they are notified of the death on election day. The election administrator shall make and sign the notation if notice of the death is received before delivery of the absentee ballot to the polling place.

(4) All rejected ballots shall be placed in the sealed package in which the voted ballots are required to be placed and may not be opened without a court order."

Section 5. **Counting board for absentee ballots.** (1) The election administrator shall:

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(a) give special instructions to any counting board for absentee ballots appointed under 13-4-101 on the proper procedures for counting the absentee ballots; and

(b) provide the forms and supplies necessary for the board to perform its duties.

(2) The counting board for absentee ballots shall:

(a) be sequestered in a room separate from where ballots are being cast;

(b) start the count of the absentee votes cast, at any time prior to the closing of the polls but not before the polls open; and

(c) follow the procedures outlined in 13-13-242 and 13-15-103 for the counting of the votes cast.

(3) No election judge or other individual having access to any results of early counting may disclose the information while the polls are open and must remain sequestered until the closing of the polls.

(4) (a) In addition to the official oath taken and subscribed to by the election judges, the members of the counting board for absentee ballots shall complete and sign the following affirmation: "I, ..., will not discuss or disclose or allow anyone else to discuss or disclose to anyone the results of the early counting of votes while the polls are open."

(b) The chief election judge shall witness and sign the affirmation.

Section 6. **Notices relating to counting board for absentee ballots.** Whenever a counting board for absentee ballots is appointed under 13-4-101, the election administrator shall:

(1) publish in the contracted newspaper of the county as provided in 7-5-2411 a notice indicating that such a method will be used for counting absentee ballots;

(2) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time the counting board for absentee ballots will meet on election day. The notice must inform the public that any person observing the procedures of the counting board must be sequestered with the board until the polls are closed and the counting board is released and must take the oath provided in [section 5].

Section 7. **Codification instruction.** Section 5 is intended to be codified as an integral part of Title 13, chapter 15, part 1, and the provisions of Title 13 apply to section 5.

Approved March 17, 1983.

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CHAPTER NO. 121

AN ACT AMENDING SECTION 13-12-101, MCA, TO REQUIRE THAT THE ELECTION LAWS TO BE FURNISHED TO ELECTION PRECINCTS INCLUDE ONLY TITLE 13, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-12-101, MCA, is amended to read:

"13-12-101. Copies of election laws to be furnished. (1) The secretary of state shall *furnish* to each election administrator *copies of this title sufficient* to *provide* each election precinct in his county with two copies and to provide a small extra supply *for the administrator.*

(2) The secretary of state shall, at the expense of the state, furnish the election administrator with copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections. The public official with whom a candidate files a declaration, petition, or acceptance of nomination shall transmit one copy to the candidate. A copy shall also be furnished to any other person required to file a statement. Upon his own information or at the written request of any elector, the secretary of state shall provide a copy to any other individual who is a candidate or who is required to make a statement required by this title."

Approved March 17, 1983.

CHAPTER NO. 122

AN ACT ELIMINATING CERTAIN QUALIFICATIONS FOR CONDEMNATION COMMISSIONERS IN EMINENT DOMAIN PROCEEDINGS AND PROVIDING FOR THEIR COMPENSATION; AMENDING SECTION 70-30-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of commissioners — affidavit — compensation. (1) Immediately upon making and entering the preliminary condemnation order, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The appointment of condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

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(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) that he is possessed of sufficient knowledge of the English language;

(b) that he is a resident of a county within the judicial district in which the action is pending;

(c) that he is not related within the sixth degree to any party; *and*

(d) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

(5) The court shall specify the compensation of the condemnation commissioners, which may not exceed $250 a hearing day, including expenses. The condemning party shall pay the compensation of the commissioners nominated."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved March 17, 1983.

CHAPTER NO. 123

AN ACT PERMITTING AN APPOINTED MEMBER OF A STATE BOARD, COMMISSION, OR COUNCIL OR A MEMBER OF A LEGISLATIVE SUBCOMMITTEE OR A SELECT OR INTERIM COMMITTEE TO RECEIVE A MIDDAY ALLOWANCE ON A DAY HE IS ATTENDING A MEETING REGARDLESS OF THE PROXIMITY OF THE MEETING PLACE TO HIS RESIDENCE OR HEADQUARTERS; AMENDING SECTIONS 2-18-502 AND 37-1-133, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-502, MCA, is amended to read:

"2-18-502. Computation of meal allowance. (1) *Except as provided in subsection (3), to* be eligible for the meal allowance provided in 2-18-501, an employee must have been in a travel status for more than 3 continuous hours. If eligible, an employee receives:

(a) the morning meal allowance if in a travel status between the hours of 12:01 a.m. and 10 a.m.;

(b) the midday meal allowance if in a travel status between the hours of 10:01 a.m. and 3 p.m.; and

(c) the evening meal allowance if in a travel status between the hours of 3:01 p.m. and 12 midnight;

(d) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift;

(e) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(2) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(3) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day he is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to his residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.

(4) The department of administration shall prescribe rules necessary to effectively administer this section for state government."

Section 2. Section 37-1-133, MCA, is amended to read:

"37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive $25 per day compensation and travel

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expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in *2-18-502*. Ex officio board members may not receive compensation but shall receive travel expenses."

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved March 17, 1983.

CHAPTER NO. 124

AN ACT TO EXTEND FOR A 10-YEAR PERIOD THE 3-YEAR EXEMPTION FROM THE SEVERANCE TAX AND ONE-HALF THE NET PROCEEDS TAX ON NATURAL GAS PRODUCED FROM A WELL 5,000 FEET DEEP OR DEEPER; AMENDING SECTION 15-36-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-121, MCA, is amended to read:

"15-36-121. Exemption from severance tax. (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state and to lessen Montana's dependence on imported natural gas.

(2) Natural gas produced from a well 5,000 feet deep or deeper on which drilling was commenced after December 31, 1976, but before December 31, *1992*, is exempt from all of the severance tax imposed by 15-36-101 for 3 years if the gas produced from the well is:

(a) placed into a natural gas distribution system for delivery to consumers after diligent completion of the well; and

(b) distributed by a natural gas distribution system serving only natural gas consumers a majority of which are within Montana or at least 10,000 natural gas consumers within Montana.

(3) The 3-year exemption provided by this section shall begin when natural gas from a qualifying well is first placed into a natural gas distribution system.

(4) Notwithstanding the provisions of subsection (2), all reporting requirements under the severance tax remain in effect."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 17, 1983.

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CHAPTER NO. 125

AN ACT TO DELETE THE REQUIREMENT THAT STATE AGENCIES AND THE GOVERNOR SUBMIT CERTAIN REPORTS; AMENDING SECTIONS 1-12-104, 2-7-103, 2-15-201, 2-15-401, 2-15-501, 20-3-105, 20-25-301, 22-1-503, 22-2-106, 37-1-106, 39-51-301, 39-71-209, AND 69-14-115, MCA; AND REPEALING SECTION 2-7-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-12-104, MCA, is amended to read:

"1-12-104. Duties of commissioners. (1) Each commissioner shall attend the meeting of the national conference of commissioners on uniform state laws and, both in and out of such national conference, shall do all in his power to promote uniformity in state laws upon all subjects where uniformity may be deemed desirable and practicable.

(2) It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws."

Section 2. Section 2-7-103, MCA, is amended to read:

"2-7-103. Review by governor of executive branch. The office of the governor shall continuously study and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency. The governor shall, by executive order or other means within the authority granted to him, take action to improve the manageability of the executive branch."

Section 3. Section 2-15-201, MCA, is amended to read:

"2-15-201. Powers and duties of governor. In addition to the duties prescribed by the constitution, the governor shall perform the following duties:

(1) He shall supervise the official conduct of all executive and ministerial officers.

(2) He shall see that all offices are filled and the duties thereof performed or, in default thereof, apply such remedy as the law allows. If the remedy is imperfect, he shall acquaint the legislature therewith at its next session.

(3) He shall make the appointments and supply the vacancies as required by law.

(4) He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

(5) Whenever any suit or legal proceeding is pending against this state or which may affect the title of this state to any property or which may result in any claim against the state, he may direct the attorney general

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to appear on behalf of the state and may employ such additional counsel as he may judge expedient.

(6) He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

(7) He may require the attorney general to aid the county attorney in the discharge of his duties.

(8) He may offer rewards not exceeding $1,000 each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison or any person who has committed or is charged with an offense punishable by death.

(9) He shall perform such duties respecting fugitives from justice as are prescribed by Title 46, chapter 30.

(10) He shall issue land warrants and patents, as prescribed in 77-2-342.

(11) He may require any officer or board to make special reports to him, upon demand, in writing.

(12) He shall discharge the duties of member of the board of examiners, of nonvoting ex officio member of the state board of education, and of member of the board of land commissioners.

(13) He has the other powers and must perform the other duties as are devolved upon him by this code or any other law of this state."

Section 4. Section 2-15-401, MCA, is amended to read:

"2-15-401. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(1) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them;

(2) keep a register of and attest the official acts of the governor, including all appointments made by him, with date of commission and names of appointees and predecessors;

(3) affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(4) record in proper books all conveyances made to the state and all articles of incorporation filed in his office;

(5) take and file in his office receipts for all books distributed by him and direct the county clerk of each county to do the same;

(6) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(7) furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office;

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(8) keep a fee book in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein;

(9) file in his office descriptions of seals in use by the different state officers;

(10) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required of him by law;

(11) register marks as provided in Title 30, chapter 13, part 3;

(12) report annually to the legislative council all changes of names received pursuant to 27-31-205 for publication in the Laws of Montana;

(13) report annually to the legislative council all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(14) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application."

Section 5. Section 2-15-501, MCA, is amended to read:

"2-15-501. General duties. It is the duty of the attorney general:

(1) to attend the supreme court and prosecute or defend all causes to which the state or any officer thereof in his official capacity is a party and all causes to which any county may be a party unless the interest of the county is adverse to the state or some officer thereof acting in his official capacity;

(2) after judgment in any of the causes referred to in the preceding subsection, to direct the issuing of such process as may be necessary to carry the same into execution;

(3) to account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county;

(4) to keep a register of all cases in which he is required to appear, which must during business hours be open to the inspection of the public. The register must show the county, district, and court in which the cases have been instituted and tried and whether they are civil or criminal. If civil, the register must show the nature of the demand, the stage of proceedings and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not. If not satisfied, the register must show the return of the sheriff. If criminal, the register must show the nature of the crime, the mode of prosecution, the stage of proceedings and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention. The attorney general must deliver the same to his successor in office.

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(5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney must, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

(6) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of his duties;

(7) to give his opinion in writing, without fee, to the legislature or either house thereof, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. He shall give any such opinion within 3 months following the date it is requested unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion shall be controlling unless overruled by a state district court or the supreme court.

(8) to bid upon and purchase in the name of the state and under the direction of the board of investments any property offered for sale under execution issued upon judgments in favor of or for the use of the state and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases;

(9) whenever the property of a judgment debtor in any judgment mentioned in the preceding subsection has been sold under a prior judgment or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of investments, to redeem such property from such prior judgment, lien, or encumbrance. All sums of money necessary for such redemption must be paid out of any money appropriated for such purposes.

(10) when in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must be paid out of any appropriations for the prosecution of delinquents;

(11) to discharge the duties of a member of the board of examiners and state board of land commissioners and other duties prescribed by law;

(12) to prescribe the form of blanks to be used by the clerks of the district courts in issuing commitments to the several state institutions, admission to which requires a court commitment."

Section 6. Section 20-3-105, MCA, is amended to read:

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"20-3-105. Administrative powers and duties. In administering the affairs of his office, the superintendent of public instruction shall have the power and it shall be his duty to:

(1) keep a record of his official acts and all documents applicable to the administration of the office, preserve all official reports submitted to him for the period required by law, and surrender them to his successor at the expiration of his term;

(2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value which come into his possession and surrender them to his successor at the expiration of his term;

(3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;

(4) provide and keep an official seal of the superintendent of public instruction by which his official acts shall be authenticated;

(5) whenever he deems necessary but not more than once every 4 years, cause the printing of a complete and updated volume of the school laws of the state which shall be offered and sold at cost of the printing and shipping to any school official or other person;

(6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It shall be offered and sold at cost of the printing and shipping to any school official or other person.

(7) if deemed necessary, publish a biennial report of the superintendent of public instruction;

(8) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;

(9) call an annual meeting of the county superintendents when he deems it advisable;

(10) as far as he shall find it practicable, address public assemblies on subjects pertaining to education in Montana; and

(11) faithfully work in all practical and possible ways for the welfare of the public schools of the state."

Section 7. Section 20-25-301, MCA, is amended to read:

"20-25-301. Regents' powers and duties. The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings therewith, and shall:

(1) have general control and supervision of the units of the Montana university system, which shall be considered for all purposes one university;

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(2) adopt rules, not inconsistent with the constitution and the laws of the state, for its own government which are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) provide, subject to the laws of the state, rules for the government of the system;

(4) grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of such institutions;

(5) adopt and use an official seal in the authentication of its acts;

(6) keep a record of its proceedings;

(7) have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(8) receive from the board of land commissioners, other boards, persons, or from the government of the United States all funds, incomes, and other property the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(9) have general control of all receipts and disbursements of the system;

(10) appoint a president and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(11) appoint an executive secretary of the system, who shall not be a unit president, fix his term of office and salary, and generally prescribe his duties. The executive secretary is not a member of the board, but he shall serve as the secretary for the regents.

(12) appoint every 2 years a budget committee composed of four members selected from the appointive members of the regents which shall review the budget requests presented by the units of the system and transmit such requests and its recommendations to the regents;

(13) confer upon the executive board of each of the units of the system such authority as may be deemed expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(14) confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit such authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(15) prevent unnecessary duplication of courses at the units of the system;

(16) investigate the needs of the units by each member of the regents visiting each unit at least once each year;

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(17) appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who shall be designated the state geologist, and appoint any other necessary assistants and employees and fix their compensation. The regents shall prepare a report to each regular session of the legislature showing the progress and condition of the bureau, including any other necessary or required information.

(18) supervise and control the agricultural experiment station, along with any executive or subordinate board or authority which may be appointed by the governor with the advice and consent of the regents;

(19) adopt a seal bearing on its face the words "Montana university system", which shall remain in the custody of the executive secretary and which shall be affixed to all diplomas and all other papers, instruments, or documents which may require it."

Section 8. Section 22-1-503, MCA, is amended to read:

"22-1-503. Authority of board. The powers and duties of said board are as follows:

(1) to make rules, not inconsistent with law, for the government of the board and for the government and administration of the state law library, including rules designating when and for what periods of time the library shall be open to the public and the office hours of the library;

(2) to appoint a librarian and prescribe the duties of such librarian when not otherwise provided for by law;

(3) to sell or exchange duplicate copies of books and pay the moneys arising therefrom into the state law library fund;

(4) to see that the books and other properties of the library are maintained in good order and repair and are protected from theft or injury;

(5) to draw from the state treasury at any time when needed for the legitimate expenses in maintaining and operating the library and acquiring books, reports, journals, and other works and properties therefor, including complete sets of statutory laws and codified laws of the United States of America, of the several states of the union, and of other jurisdictions, any moneys in the fund and available for such purposes;

(6) to establish such lawful relations and working arrangements with the library of congress of the United States, with the copyright office therein, and with the superintendent of documents of the United States as may be for the benefit and advantage of the state law library and promote the acquisition of books and other works from such sources as may be useful to those resorting to the facilities of the state law library."

Section 9. Section 22-2-106, MCA, is amended to read:

"22-2-106. Council duties. The duties of the council shall be to:

(1) encourage throughout the state the study and presentation of the arts and stimulate public interest and participation therein;

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(2) cooperate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to music, theatre, dance, painting, sculpture, architecture, and allied arts and crafts, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) foster public interest in the cultural heritage of our state and expand the state's cultural resources;

(4) encourage and assist freedom of artistic expression essential for the well-being of the arts."

Section 10. Section 37-1-106, MCA, is amended to read:

"37-1-106. Biennial report to governor and legislature. The department, in cooperation with each licensing board, shall prepare a biennial report. *The* biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant."

Section 11. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration — duties and powers of department. (1) It shall be the duty of the department to administer this chapter and it shall have power and authority to adopt, amend, or rescind such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the department shall prescribe.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal which shall be judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature and make recommendations with respect thereto."

Section 12. Section 39-71-209, MCA, is amended to read:

"39-71-209. Publication of reports and bulletins authorized. The division shall have the power and authority to publish and distribute at its discretion from time to time such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable."

Section 13. Section 69-14-115, MCA, is amended to read:

"69-14-115. Investigation, enforcement, and report concerning railroad safety laws. (1) The commission shall:

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(a) make inquiry into the observance by all railroads within this state of the laws of the United States and of Montana intended to safeguard the lives of the employees of persons or corporations engaged in operating the same;

(b) lay complaint before the proper state or federal officer, of any infraction of any of such laws; and

(c) prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

(2) The commission shall in *an* annual report set out what effort it has made to carry out the provisions of this section, with the result thereof, and in detail what steps it has taken to prosecute any violations of any such acts of which it has secured information. A copy of this annual report shall be mailed to the secretary of the department of transportation."

Section 14. **Repealer.** Section 2-7-102, MCA, is repealed.

Approved March 17, 1983.

CHAPTER NO. 126

AN ACT ALLOWING PHYSICIANS TO REPORT TO THE DIVISION OF MOTOR VEHICLES PATIENTS WITH CONDITIONS THAT IMPAIR THEIR ABILITY TO SAFELY OPERATE A MOTOR VEHICLE; AND PROVIDING LIMITED IMMUNITY FOR SUCH PHYSICIANS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Report to division by physician.** (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair the person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the division of motor vehicles. The division, upon receiving the report, shall require the person so reported to be examined in the manner provided for in 61-5-110 and 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license before the division or a court.

(b) The physician's report may not be utilized in a criminal proceeding, or in a civil proceeding other than as provided in this subsection, without the consent of the patient.

Section 2. **Physician's immunity from liability.** Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to [section 1]

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except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to [section 1].

Approved March 18, 1983.

CHAPTER NO. 127

AN ACT TO MODIFY THE LIMITATION THAT THE BOARD OF LAND COMMISSIONERS MAY NOT ISSUE COAL LEASES TO FOREIGN INTERESTS; AMENDING SECTION 77-3-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-3-305, MCA, is amended to read:

"77-3-305. Limitations on leasing. The board shall not issue leases:

(1) to any *citizen of another country or any person, partnership, corporation, association, or other legal entities* controlled by interests foreign to the United States *unless such country provides for similar or like privileges to citizens of the United States*;

(2) if after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip-mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future."

Approved March 18, 1983.

CHAPTER NO. 128

AN ACT CLARIFYING THE INCOME TAX WITHHOLDING STATUS OF WAGES PAID TO MEMBERS OF THE RESERVE ARMED FORCES; AMENDING SECTIONS 15-30-201 AND 15-30-202, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

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(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for such service, the term "employer" means the person having control of the payment of such wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include remuneration paid:

(a) for active service as a member of the *regular* armed forces of the United States, *as defined in 10 U.S.C. section 101(33)*;

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business;

(ii) such individual was regularly employed (as determined under subsection (4)(d)(i)) by such employer in the performance of such service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at

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a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when such payments are in the form of lodgings or meals and such services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

(j) for national guard and reserve training as provided in 5 U.S.C. section 5517(d)."

Section 2. Section 15-30-202, MCA, is amended to read:

"**15-30-202. Withholding of tax from wages.** Every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the department. Persons on active service as members of the *regular* armed forces of the United States, *as defined in 10 U.S.C. section 101(33), and members of the national guard and reserves participating in training as provided in 5 U.S.C. section 5517(d)* shall not be subject to the provisions of this section."

Section 3. **Effective date — applicability.** This act is effective on July 1, 1983, and applies to wages paid after June 30, 1983.

Approved March 18, 1983.

CHAPTER NO. 129

AN ACT REVISING THE MONTANA YOUTH COURT ACT CONCERNING 6-MONTH COMMITMENTS TO THE DEPARTMENT OF INSTITUTIONS AND THE COMMITMENT REVOCATION PROCESS; AMENDING SECTIONS 41-5-403 AND 41-5-523, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-403, MCA, is amended to read:

"**41-5-403. Disposition permitted under informal adjustment.** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in a licensed foster home or other home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer of legal custody to the department of institutions *for* a period of 6 months, *which period may be extended for 6 months upon further order of the court after notice and hearing*;

(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim, however the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the youth violates his aftercare agreement as provided for in 53-30-226, he must be returned to the court for further disposition. No youth may be placed in a state youth correctional facility under informal adjustment."

Section 2. Section 41-5-523, MCA, is amended to read:

"**41-5-523. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth, consistent with subsection (1)(d) of this section; *or*

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for

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consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth 16 years or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may consider advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b).

(4) *Any order of the court may be modified at any time. In the case of a youth committed to the department of institutions, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.*

(5) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

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It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge"

Approved March 18, 1983.

CHAPTER NO. 130

AN ACT ALLOWING THE WARDEN OF THE MONTANA STATE PRISON TO RESTORE GOOD TIME WITH THE APPROVAL OF THE DEPARTMENT; AMENDING SECTION 53-30-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-105, MCA, is amended to read:

"53-30-105. Good time allowance. (1) The department of institutions shall adopt rules providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) 10 days per month for inmates assigned to maximum, close, and medium I security classifications;

(b) 13 days per month for those classified as medium II and minimum security classifications;

(c) 15 days per month for inmates after having been assigned as medium II or minimum security for an uninterrupted period of 1 year;

(d) 13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) 3 days per month for those inmates participating in self-improvement activities designated by the department.

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(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden of the state prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) A person may not earn good time under this section while he is on probation or parole.

(4) The warden of the state prison may request that all or portions of any previously forfeited good time be restored as a result of subsequent good behavior. Any restoration of good time allowance must be approved by the department."

Approved March 18, 1983.

CHAPTER NO. 131

AN ACT TO AMEND AND GENERALLY REVISE THE LAWS RELATING TO THE FILING OF DUPLICATE ORIGINALS OF DOCUMENTS WITH THE SECRETARY OF STATE; AMENDING SECTIONS 30-13-204, 30-13-207, 30-13-208, 30-13-210, 30-13-212, 30-13-311, 30-13-312, 30-13-314 THROUGH 30-13-316, 35-1-201, 35-1-203, 35-1-209, 35-1-210, 35-1-212, 35-1-213, 35-1-306, 35-1-602, 35-1-612, 35-1-804, 35-1-805, 35-1-901 THROUGH 35-1-904, 35-1-907 THROUGH 35-1-909, 35-1-911, 35-1-912, 35-1-1008, 35-1-1009, 35-1-1011, 35-1-1013, 35-1-1018, 35-2-201, 35-2-203, 35-2-208 THROUGH 35-2-210, 35-2-303, 35-2-604, 35-2-705, 35-2-706, 35-2-807, 35-2-808, 35-2-810, 35-2-812, 35-2-817, 35-2-1201, 35-6-201, 35-12-606, 35-12-1302, 35-12-1303, AND 35-17-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-204, MCA, is amended to read:

"30-13-204. Filing application for registration — issuance of certificate. (1) *One original and one copy* of application for registration of *an* assumed business name shall be *executed and* delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; and

(c) issue a certificate of registration, to which he shall affix the *copy*.

(2) The certificate of registration, together with the *copy* of the application for registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant.

(3) The registration of an assumed business name remains in effect until canceled."

Section 2. Section 30-13-207, MCA, is amended to read:

"30-13-207. Application for renewal of assumed business name. *One original and one copy* of *an* application for renewal of registration of an assumed business name shall be executed, verified, and delivered to the secretary of state. The application shall include but not be limited to the following information:

(1) the complete assumed business name;

(2) the name and address, including street name and number, if any, of applicant;

(3) description of business transacted; and

(4) the name of the county or counties in which business is being transacted."

Section 3. Section 30-13-208, MCA, is amended to read:

"30-13-208. Filing of application for renewal of registration of assumed business name — issuance of certificate thereon. (1) If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; and

(c) issue a certificate of renewal, to which he shall affix the *copy*.

(2) The certificate of renewal, together with the *copy* of *the* application for renewal of registration of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant."

Section 4. Section 30-13-210, MCA, is amended to read:

"30-13-210. Filing amendment to registration of assumed business name — issuance of certificate thereon. (1) *One original and one copy* of *an* amendment to the registration of an assumed business name, executed and verified on forms furnished by the secretary of state, shall be delivered to the secretary of state. The application for amended registration of an assumed business name shall include but not be limited to the following information:

(a) complete assumed business name prior to adoption of amendment;

(b) complete new assumed business name, if applicable;

(c) name and address of the registrant, including street name and number of the business office;

(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the

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person having an interest in the business with such registered assumed business name;

(e) the name of the county or counties in which the name is being used;

(f) if there is a change in the identity of the county or counties or addition of a county or counties in which the assumed business name is being used or is to be used, the name(s) of the new county or counties;

(g) if a person or persons having an interest in a business with a registered assumed name withdraws or dies, a statement of such fact; and

(h) a statement that the amended registration of assumed business name supersedes the original registration and all amendments thereto.

(2) If the secretary of state finds that the application for amended registration of assumed business name complies with this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; and

(c) issue a certificate of amendment, to which he shall affix the *copy*.

(3) The certificate of amendment, together with the *copy* of the amendment affixed thereto by the secretary of state, shall be returned to the registrant.

(4) The failure of the registrant of an assumed business name to comply with the requirements of this section shall result in the cancellation by the secretary of state of the registration."

Section 5. Section 30-13-212, MCA, is amended to read:

"30-13-212. Filing application for reservation of assumed business name — issuance of certificate thereon. (1) *One original and one copy* of *an* application for reservation of an assumed business name, duly executed and verified by the applicant, shall be delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of reservation, to which he shall affix the *copy*.

(2) The certificate of reservation, together with the *copy* of *the* application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant."

Section 6. Section 30-13-311, MCA, is amended to read:

"30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this

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state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for such registration and, if a corporation, the state of incorporation;

(b) the essential feature of the mark to be registered;

(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business;

(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form thereof or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed and verified by affidavit of the applicant or a member of the firm or an officer of the corporation or association applying.

(3) The application must be accompanied by *two copies of* a specimen or facsimile of such mark.

(4) The application for registration must be accompanied by a filing fee of $20, payable to the secretary of state."

Section 7. Section 30-13-312, MCA, is amended to read:

"30-13-312. Filing application and issuing certificate of registration. (1) *One original and one copy* of an application for registration of a mark must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on *the original and the copy* the *word* "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; and

(c) issue a certificate of registration to which he shall affix the *copy*.

(2) The certificate of registration, together with the *copy* of the application for registration of mark affixed thereto, shall be returned to the applicant.

(3) Any certificate of registration issued by the secretary of state under the provisions of this section or a copy thereof duly certified by the secretary of state is admissible in evidence as competent and sufficient proof

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of the registration of such mark in any judicial proceeding in any court of this state."

Section 8. Section 30-13-314, MCA, is amended to read:

"30-13-314. Filing application for renewal of registration — issuing certificate of renewal. (1) *One original and one copy* of an application for renewal of mark registration must be delivered to the secretary of state. If the secretary of state finds that the application complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on *the original and the copy* the *word* "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; and

(c) issue a certificate of registration to which he shall affix the *copy*.

(2) The certificate of renewal of registration, together with the *copy* of the application for renewal of *mark* registration affixed thereto, shall be returned to the applicant.

(3) A mark registration may be renewed for successive periods of 10 years in the manner provided for in subsections (1) and (2).

(4) The secretary of state shall notify registrants of marks of the necessity of renewal within the year immediately preceding the expiration of the 10 years from the date of registration, by writing to the last-known address of the registrants.

(5) Any registration in force on July 1, 1979, expires 10 years from the date of the registration or from the date of the last renewal thereof or on July 1, 1980, whichever is later, if renewal of mark registration is not effected in the manner provided for in this part.

(6) The secretary of state shall, by January 1, 1981, notify each person who registered a mark prior to July 1, 1980, of the date of expiration of such registration unless renewed in accordance with the provisions of this part, by writing to the last-known address of the registrant."

Section 9. Section 30-13-315, MCA, is amended to read:

"30-13-315. Assignment. (1) Any mark and its registration under this part may be assigned in conjunction with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark for the remainder of the term of the current registration. An assignment of any registration under this part is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within 3 months after the date of the assignment or prior to such subsequent purchase.

(2) *One original and one copy* of an assignment of a mark must be delivered to the secretary of state and shall set forth information including but not limited to the following:

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(a) the name and address of the assignor;

(b) the name and address of the assignee;

(c) the registration number of the mark; and

(d) the date of registration.

(3) The assignment of a mark must be signed and verified by the assignor.

(4) The assignment of a mark must be accompanied by a filing fee of $20, payable to the secretary of state."

Section 10. Section 30-13-316, MCA, is amended to read:

"**30-13-316. Filing of assignment — issuing certificate of assignment.** (1) *One original and one copy* of the assignment of a mark must be delivered to the secretary of state. If the secretary of state finds that the assignment complies with the requirements of this part, he shall, when all fees have been paid as prescribed in this part:

(a) endorse on *the original and the copy* the *word* "filed" and *the* month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of assignment to which he shall affix the *copy*.

(2) The certificate of assignment, together with the *copy* of assignment of a mark affixed thereto, shall be returned to the assignee."

Section 11. Section 35-1-201, MCA, is amended to read:

"**35-1-201. Incorporators.** One or more persons of legal age or a domestic or foreign corporation may act as incorporator or incorporators of a corporation by signing, acknowledging, and delivering *one original and one copy of articles of incorporation* to the secretary of state."

Section 12. Section 35-1-203, MCA, is amended to read:

"**35-1-203. Articles of incorporation — filing — issuance of certificate of incorporation.** (1) *One original and one copy* of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of incorporation to which he shall affix the *copy*.

(2) The certificate of incorporation, together with the *copy* of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative."

Section 13. Section 35-1-209, MCA, is amended to read:

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"35-1-209. Articles of amendment — contents. The articles of amendment shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such articles and shall set forth:

(1) the name of the corporation;

(2) the amendments so adopted;

(3) the date of the adoption of the amendment by the shareholders or the board of directors when no shares have been issued;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or, if no shares have been issued, a statement to that effect; *and*

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected."

Section 14. Section 35-1-210, MCA, is amended to read:

"35-1-210. Filing of articles of amendment and issuance of certificate of amendment. (1) *One original and one copy* of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of amendment to which he shall affix the *copy*.

(2) The certificate of amendment, together with the *copy* of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative."

Section 15. Section 35-1-212, MCA, is amended to read:

"35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it

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into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and verified by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) *One original and one copy* of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(ii) file *the original* in his office; *and*

(iii) issue a certificate of amendment to which he shall affix the *copy*.

(c) The certificate of amendment, together with the *copy* of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

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(4) The amendment becomes effective upon the issuance of the certificate of amendment by the secretary of state or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as may be provided for in the articles of amendment, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation."

Section 16. Section 35-1-213, MCA, is amended to read:

"35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon

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as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively; *and*

(e) if the restated articles of incorporation provide for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected."

Section 17. Section 35-1-306, MCA, is amended to read:

"35-1-306. Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office is changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent is changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; *and*

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof, verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed, file such statement in his office. Upon filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, is effective.

(3) A registered agent of a corporation may resign as registered agent upon *executing* a written notice of resignation *and filing one original and one copy* with the secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need

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be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation."

Section 18. Section 35-1-602, MCA, is amended to read:

"35-1-602. Issuance of shares of preferred or special classes in series — filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted; *and*

(f) voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof;

(c) the date of adoption of such resolution; *and*

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement. *The original and one copy of such statement* shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) return the *copy* to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation."

Section 19. Section 35-1-612, MCA, is amended to read:

"35-1-612. Power of corporation to acquire its own shares. (1) A corporation shall have the power to acquire its own shares. All of its own shares acquired by a corporation, upon acquisition, constitute authorized but unissued shares, unless the articles of incorporation provide that they may not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.

(2) If the number of authorized shares is reduced by an acquisition, the corporation shall, no later than the time it files its next annual report under this chapter with the secretary of state, file a statement of cancellation showing the reduction in the authorized shares. The statement of cancellation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement and shall set forth:

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

(3) *One original and one copy* of *the* statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as in this chapter *prescribed*:

(a) endorse on *the original and the copy* the word *"filed"* and the month, day, and year of the filing thereof;

(b) file *the original* in his office; and

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(c) return the *copy* to the corporation or its representative."

Section 20. Section 35-1-804, MCA, is amended to read:

"35-1-804. Articles of merger, consolidation, or exchange — contents — filing. (1) Upon receiving the approvals required by 35-1-801 and 35-1-803, articles of merger, consolidation, or exchange shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers of each corporation signing such articles and shall set forth:

(a) the plan of merger, consolidation, or exchange;

(b) as to each corporation, either:

(i) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(ii) a statement that the vote of shareholders is not required by virtue of 35-1-803(5); and

(c) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) *One original and one copy* of the articles of merger, consolidation, or exchange shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter *prescribed*:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of merger, consolidation, or exchange to which he shall affix the *copy*.

(3) The certificate of merger, consolidation, or exchange, together with the *copy* of the articles of merger, consolidation, *or exchange* affixed thereto by the secretary of state, shall be returned to the surviving, new, or acquiring corporation, as the case may be, or its representative."

Section 21. Section 35-1-805, MCA, is amended to read:

"35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation; *and*

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(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of its officers signing such articles and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On *or* after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, *one original and one copy* of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; and

(c) issue a certificate of merger to which he shall affix the *copy*.

(5) The certificate of merger, together with the *copy* of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative."

Section 22. Section 35-1-901, MCA, is amended to read:

"35-1-901. Voluntary dissolution by incorporators or initial board of directors — filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time in the following manner:

(1) Articles of dissolution shall be executed by a majority of the incorporators or initial board of directors and verified by them and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

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(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid; *and*

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) *One original and one copy* of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of dissolution to which he shall affix the *copy*.

(3) The certificate of dissolution, together with the *copy* of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, the board of directors, or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease."

Section 23. Section 35-1-902, MCA, is amended to read:

"35-1-902. Voluntary dissolution by consent of shareholders — statement of intent. (1) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(2) Upon the execution of such written consent, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation; *and*

(e) a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized."

Section 24. Section 35-1-903, MCA, is amended to read:

"35-1-903. Voluntary dissolution by act of corporation — statement of intent. A corporation may be dissolved by the act of the corporation when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

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(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or special meeting, shall state that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(e) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; *and*

(f) the number of shares voted for and against the resolution, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively."

Section 25. Section 35-1-904, MCA, is amended to read:

"35-1-904. Filing of statement of intent to dissolve. *One original and one copy* of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(2) file *the original* in his office; *and*

(3) return the *copy* to the corporation or its representative."

Section 26. Section 35-1-907, MCA, is amended to read:

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"35-1-907. Revocation of voluntary dissolution proceedings by consent of shareholders. (1) By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(2) Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings; *and*

(e) that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized."

Section 27. Section 35-1-908, MCA, is amended to read:

"35-1-908. Revocation of voluntary dissolution proceedings by act of corporation. By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(2) Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(a) the name of the corporation;

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(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(e) the number of shares outstanding; *and*

(f) the number of shares voted for and against the resolution, respectively."

Section 28. Section 35-1-909, MCA, is amended to read:

"35-1-909. Filing of statement of revocation of voluntary dissolution proceedings. *One original and one copy* of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(2) file *the original* in his office; *and*

(3) return the *copy* to the corporation or its representative."

Section 29. Section 35-1-911, MCA, is amended to read:

"35-1-911. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, which statement shall set forth:

(1) the name of the corporation;

(2) that the secretary of state has theretofore filed a statement of intent to dissolve the corporation and the date on which such statement was filed;

(3) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(4) that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; *and*

(5) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit."

Section 30. Section 35-1-912, MCA, is amended to read:

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"35-1-912. Filing of articles of dissolution — issuance of certificate of dissolution — effect. (1) *One original and one copy* of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of dissolution to which he shall affix the *copy*.

(2) The certificate of dissolution, together with the *copy* of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter."

Section 31. Section 35-1-1008, MCA, is amended to read:

"35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

(c) the date of incorporation and the period of duration of the corporation;

(d) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(e) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address;

(f) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(g) the names and respective addresses of the directors and officers of the corporation;

(h) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class;

(i) a statement of the aggregate number of issued shares, itemized by classes and series, if any, within a class; and

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(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such application."

Section 32. Section 35-1-1009, MCA, is amended to read:

"35-1-1009. Filing of application — issuance of certificate of authority. (1) *One original and one copy* of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country of incorporation.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof; *and*

(b) file in his office *the original* of the application and the copy of the articles of incorporation and amendments thereto; *and*

(c) issue a certificate of authority to transact business in this state to which he shall affix the *copy of the* application.

(3) The certificate of authority, together with the *copy* of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative."

Section 33. Section 35-1-1011, MCA, is amended to read:

"35-1-1011. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of *one original and one copy* with the secretary of state, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority."

Section 34. Section 35-1-1013, MCA, is amended to read:

"35-1-1013. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

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(a) the name of the corporation;

(b) the address, including street and number, if any, of its then registered office;

(c) if the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address, including street and number, if any, of its registered office and the address of the business office of its registered agent, as changed, will be identical; *and*

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed *for* the corporation by *any officer thereof* and verified by him and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office and, upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) *A* registered agent of a foreign corporation may resign as *registered* agent upon *executing* a written notice *of resignation and filing one original and one copy* with the secretary of state, who shall *immediately* mail a copy thereof to the corporation at its *registered* office. The appointment of *the* agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation."

Section 35. Section 35-1-1018, MCA, is amended to read:

"35-1-1018. Filing of application for withdrawal — issuance of certificate of withdrawal — effect. (1) *One original and one copy* of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

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(c) issue a certificate of withdrawal to which he shall affix the *copy*.

(2) The certificate of withdrawal, together with the *copy* of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease."

Section 36. Section 35-2-201, MCA, is amended to read:

"**35-2-201. Incorporators.** One or more persons may incorporate a corporation by signing and delivering *one original and one copy of* articles of incorporation to the secretary of state. But no subordinate body shall be incorporated unless such action is approved in writing by the grand head or national body in accordance with its applicable rules and such approval or certified copy thereof is attached to the articles of incorporation submitted to the secretary of state."

Section 37. Section 35-2-203, MCA, is amended to read:

"**35-2-203. Articles of incorporation — filing — issuance of certificate of incorporation.** (1) *One original and one copy* of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of incorporation to which he shall affix the *copy*.

(2) The certificate of incorporation, together with the *copy* of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative."

Section 38. Section 35-2-208, MCA, is amended to read:

"**35-2-208. Articles of amendment.** The articles of amendment shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) the amendment so adopted;

(3) if there are members entitled to vote thereon:

(a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; *and*

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(4) if there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office."

Section 39. Section 35-2-209, MCA, is amended to read:

"35-2-209. Articles of amendment — filing — issuance of certificate of amendment — effect of issuance. (1) *One original and one copy* of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of amendment to which he shall affix the *copy*.

(2) The certificate of amendment, together with the *copy* of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(3) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(4) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending action to which such corporation shall be a party or the existing rights of persons other than members. In the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason."

Section 40. Section 35-2-210, MCA, is amended to read:

"35-2-210. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or members. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered

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office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; *and*

(b) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by *one original and one copy of* a statement executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the members, but if there are no members or no members entitled to vote thereon, that the restated articles were adopted at a meeting of the board of directors upon receiving an affirmative vote of a majority of the directors in office; *and*

(c) that the restated articles correctly set forth the provisions of the articles of incorporation as theretofore amended and that they have been duly adopted as required by law."

Section 41. Section 35-2-303, MCA, is amended to read:

"35-2-303. Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office *is to* be changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent *is to* be changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; *and*

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed *for* the corporation by *any officer thereof* and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing, the change of

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address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) *A* registered agent of a corporation may resign as *registered* agent upon *executing* a written notice *of resignation and filing one original and one copy* with the secretary of state, who shall *immediately* mail a copy thereof to the corporation *at its registered office.* The appointment of *the* agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same state, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation."

Section 42. Section 35-2-604, MCA, is amended to read:

"35-2-604. Articles of merger or consolidation — filing — issuance of certificate of merger or consolidation. (1) Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger or the plan of consolidation;

(b) if the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation:

(i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; *and*

(c) if any merging or consolidating corporation has no members or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that such plan received the vote of a majority of the directors in office.

(2) *One original and one copy* of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of merger or a certificate of consolidation to which he shall affix the *copy.*

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(3) The certificate of merger or certificate of consolidation, together with the *copy* of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative."

Section 43. Section 35-2-705, MCA, is amended to read:

"35-2-705. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation shall have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, which statement shall set forth:

(1) the name of the corporation;

(2) if there are members entitled to vote thereon:

(a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(3) if there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted, and a statement of the fact that such resolution received the vote of a majority of the directors in office;

(4) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(5) a copy of the plan of distribution, if any, as adopted by the corporation or a statement that no plan was so adopted;

(6) that all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter; *and*

(7) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit."

Section 44. Section 35-2-706, MCA, is amended to read:

"35-2-706. Filing of articles of dissolution — issuance of certificate of dissolution — effect. (1) *One original and one copy* of *the* articles of dissolution shall be delivered to the secretary of state. If the

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secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of dissolution to which he shall affix the *copy*.

(2) The certificate of dissolution, together with the *copy* of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this chapter."

Section 45. Section 35-2-807, MCA, is amended to read:

"35-2-807. Application for certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(d) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(e) the purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state;

(f) the names and respective addresses of the directors and officers of the corporation; *and*

(g) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary."

Section 46. Section 35-2-808, MCA, is amended to read:

"35-2-808. Filing of application — issuance of certificate of authority. (1) *One original and one copy* of the application of the corporation for a certificate of authority shall be delivered to the secretary of

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state, together with a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the state or country under the laws of which it is incorporated.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office *the original* of the application and the copy of the articles of incorporation and amendments thereto; *and*

(c) issue a certificate of authority to conduct affairs in this state to which he shall affix the *copy of the* application.

(3) The certificate of authority, together with the *copy* of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative."

Section 47. Section 35-2-810, MCA, is amended to read:

"35-2-810. Amended certificate of authority. (1) A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of *one original and one copy* with the secretary of state, the issuance of an amended certificate of authority, and the effect thereof shall be the same as in the case of an original application for a certificate of authority."

Section 48. Section 35-2-812, MCA, is amended to read:

"35-2-812. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office be changed, the address to which the registered office is to be changed;

(d) the name of its registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; *and*

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(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed *for* the corporation by *any officer thereof* and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) *A* registered agent *of* a foreign corporation may resign as *registered* agent upon *executing* a written notice *of resignation and filing one original and one copy* with the secretary of state, who shall *immediately* mail a copy thereof to the foreign corporation at its *registered* office. The appointment of *the* agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same state, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation."

Section 49. Section 35-2-817, MCA, is amended to read:

"35-2-817. Filing of application for withdrawal — issuance of certificate of withdrawal — effect. (1) *One original and one copy* of *the* application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on *the original and the copy* the word "filed" and the month, day, and year of the filing thereof;

(b) file *the original* in his office; *and*

(c) issue a certificate of withdrawal to which he shall affix the *copy*.

(2) The certificate of withdrawal, together with the *copy* of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this state shall cease."

Section 50. Section 35-2-1201, MCA, is amended to read:

"35-2-1201. Reinstatement of corporation whose term has expired. (1) The secretary of state may:

(a) reinstate any corporation which has expired under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

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(2) A corporation applying for reinstatement shall submit to the secretary of state *one original and one copy of the* application, executed and verified by a person who was an officer or director at the time of expiration, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the expiration."

Section 51. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation. (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state *one original and one copy of the* application, executed and verified by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

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(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-921 or 35-2-711;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 52. Section 35-12-606, MCA, is amended to read:

"35-12-606. Filing in the office of the secretary of state. (1) *One original and one copy* of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on *the original and the copy* the word "filed" and the day, month, and year of the filing thereof;

(b) file *the original* in his office; and

(c) return the *copy* to the person who filed it or his representative.

(2) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership is amended as set forth therein; and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is canceled."

Section 53. Section 35-12-1302, MCA, is amended to read:

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"**35-12-1302. Registration.** Before transacting business in this state, a foreign limited partnership must register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state *one original and one copy of the* application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and date of its formation;

(3) the general character of the business it proposes to transact in this state;

(4) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

(5) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed pursuant to subsection (4) or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(6) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership; and

(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses."

Section 54. Section 35-12-1303, MCA, is amended to read:

"**35-12-1303. Issuance of registration.** (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) endorse on the application the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office *the original* of the application; and

(c) issue a certificate of registration to transact business in this state.

(2) The certificate of registration, together with *a copy* of the application, must be returned to the person who filed the application or his representative."

Section 55. Section 35-17-204, MCA, is amended to read:

"**35-17-204. Adoption of chapter by existing associations.** Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be

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brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall *prepare one original and one copy of* a statement signed and sworn to by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation."

Approved March 18, 1983.

CHAPTER NO. 132

AN ACT CHANGING THE NAME OF THE EASTMONT TRAINING CENTER TO THE EASTMONT HUMAN SERVICES CENTER; REMOVING A PROVISION RELATING TO THE PURPOSES OF THE GLENDIVE NURSING HOME FACILITY; AMENDING SECTIONS 53-1-202, 53-1-402, 53-20-102, 53-20-501, 53-20-502, AND 53-20-505, MCA; AND REPEALING SECTION 53-20-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-202, MCA, is amended to read:

"**53-1-202. Institutions in department.** (1) The following institutions are in the department:

(a) Galen state hospital;

(b) Montana veterans' home;

(c) State prison;

(d) Mountain View school;

(e) Pine Hills school;

(f) Boulder River school and hospital;

(g) Warm Springs state hospital;

(h) Montana center for the aged;

(i) Swan River youth forest camp;

(j) Eastmont *human services* center;

(k) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

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Section 2. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents subject to per diem and ancillary charges. The department shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

(1) Warm Springs state hospital;

(2) Boulder River school and hospital;

(3) Galen state hospital;

(4) Montana veterans' home;

(5) Montana center for the aged; and

(6) Eastmont *human services* center."

Section 3. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals, which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of developmental disabilities and certified by the department of institutions or the department of social and

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rehabilitation services in accordance with standards of professional licensing boards, federal regulations, and the joint commissions on accreditation of hospitals.

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating, and habilitating the developmentally disabled on an inpatient basis, including the Boulder River school and hospital and the Eastmont *human services* center. The term does not include a group home, foster home, or halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this part.

(10) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health."

Section 4. Section 53-20-501, MCA, is amended to read:

"**53-20-501. Primary function of Boulder River school and hospital and Eastmont human services center.** The primary functions of the Boulder River school and hospital and the Eastmont *human services* center are the care, treatment, training, education, and necessary medical treatment of mentally retarded persons."

Section 5. Section 53-20-502, MCA, is amended to read:

"**53-20-502. Location of and services provided by Eastmont human services center.** The mental retardation center at Glendive is the Eastmont *human services* center for residential and outpatient care of mentally retarded persons residing in Montana. The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall provide services similar to those provided at Boulder River school and hospital. However, the center may not be a duplication of Boulder River school and hospital but shall be an extension thereof."

Section 6. Section 53-20-505, MCA, is amended to read:

"**53-20-505. Disposition of facility.** Nothing in 53-20-504 prohibits the disposition of the facility as provided in 77-2-302 if an appropriate use

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for the facility cannot be found by the department of institutions or the department of social and rehabilitation services."

Section 7. **Repealer.** Section 53-20-503, MCA, is repealed.

Approved March 18, 1983.

CHAPTER NO. 133

AN ACT TO INCREASE THE TIME PERIOD FOR INVOLUNTARY COMMITMENT OF ALCOHOLICS TO 40 DAYS; AMENDING SECTION 53-24-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-302, MCA, is amended to read:

"53-24-302. Involuntary commitment of alcoholics. (1) A person may be committed to the custody of the department by the district court upon the petition of his spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that he has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, a parent or his legal guardian if he is a minor, the administrator in charge of the approved public treatment facility to which he has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall have a right to have a licensed physician of his own choosing examine him and testify on his behalf. If he has no funds with which to pay such physician, the reasonable costs of one such examination and testimony shall be paid by the county. The person shall be present unless the court believes that

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his presence is likely to be injurious to him. He shall be advised of his right to counsel, and if he is unable to hire his own counsel, the court shall appoint an attorney to represent him at the expense of the county. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If he refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. It may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for him and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the custody of the department for treatment for a period of *40* days unless sooner discharged. At the end of the *40*-day period, he shall automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for his recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period shall be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of his parents or his legal guardian if he is a minor, and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:

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(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, be represented by counsel at every stage of any proceedings relating to his commitment and recommitment, and have counsel appointed by the court or provided by the court if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person whose commitment or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or his parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer him to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which person to be committed resides or is present."

Approved March 18, 1983.

CHAPTER NO. 134

AN ACT REVISING THE DEFINITION OF INCOME FOR PURPOSES OF COMPUTING THE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY; INCREASING THE MAXIMUM ALLOWABLE CREDIT FROM $150 TO $400; CLARIFYING THE APPLICATION OF THE CREDIT WHEN PROPERTY IS BOTH OWNED AND RENTED; REQUIRING THAT PROPERTY ELIGIBLE FOR THE CREDIT BE SUBJECT TO AD VALOREM TAX; AMENDING SECTIONS 15-30-171, 15-30-176, AND 15-30-177, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-171, MCA, is amended to read:

"15-30-171. Residential property tax credit for elderly — definitions. As used in 15-30-171 through 15-30-179, the following definitions apply:

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(1) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; *and*

(h) all payments under federal social security.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(4) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(5) "*Gross household* income" means all income received by all individuals of a household while they are members of the household.

(6) "Household income" means $0 or the amount obtained by subtracting $4,000 from gross household income, whichever is greater.

(7) "Homestead" means a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana, owned and occupied as a residence by the owner for at least 6 months of the claim period or occupied as a dwelling of a renter or lessee for at least 6 months of the claim period, and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling.

(8) "Department" means the department of revenue.

(9) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's length transaction with the landlord.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

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Section 2. Section 15-30-176, MCA, is amended to read:

"15-30-176. Residential property tax credit for elderly — computation of relief. The amount of the tax credit granted under the provisions of 15-30-171 through 15-30-179 is computed as follows:

(1) In the case of a claimant who owns the homestead for which a claim is made, the credit is the amount of property tax paid less the deduction specified in subsection *(4)*.

(2) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection *(4)*.

(3) In the case of a claimant who both owns and rents the homestead for which a claim is made, the credit is:

(a) the amount of property tax paid on the owned portion of the homestead less the deduction specified in subsection (4); plus

(b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).

(4) Property tax paid and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
$ 0-999	$0
1,000-1,999	$0
2,000-2,999	the product of .006 times the household income
3,000-3,999	the product of .016 times the household income
4,000-4,999	the product of .024 times the household income
5,000-5,999	the product of .028 times the household income
6,000-6,999	the product of .032 times the household income
7,000-7,999	the product of .035 times the household income
8,000-8,999	the product of .039 times the household income
9,000-9,999	the product of .042 times the household income
10,000-10,999	the product of .045 times the household income
11,000-11,999	the product of .048 times the household income
12,000 & over	the product of .050 times the household income

(4) In no case may the credit granted exceed *$400*."

Section 3. Section 15-30-177, MCA, is amended to read:

"15-30-177. Residential property tax credit for elderly — limitations. (1) Only one claimant per household in a claim period under the provisions of 15-30-171 through 15-30-179 is entitled to relief.

(2) No claim for relief may be allowed for any portion of property taxes paid or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) No claim for relief may be allowed on rented lands or rented dwellings that are not subject to ad valorem taxation in Montana during the claim period."

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Section 4. **Effective date.** This act is effective on passage and approval and is applicable to claim periods beginning after December 31, 1982.

Approved March 18, 1983.

CHAPTER NO. 135

AN ACT LIMITING THE APPLICATION OF THE RULE OF 78THS METHOD OF COMPUTING INTEREST AND REFUNDS ON PREPAYMENT TO LOANS AND RETAIL INSTALLMENT CONTRACTS MADE FOR A TIME PERIOD OF NOT MORE THAN 61 MONTHS; PROVIDING FOR REFUND OR CREDIT ON PREPAYMENT ON LOANS OR CONTRACTS EXCEEDING 61 MONTHS; AMENDING SECTIONS 31-1-242 AND 32-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY CLAUSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-242, MCA, is amended to read:

"**31-1-242. Refunds on prepayment.** *(1)* Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments.

(2) In a contract where the period of the contract does not exceed 61 months, the amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning 1 month after prepayment is made bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than $1, no refund need be made.

(3) In any contract where the period of the contract exceeds 61 months, the amount of such refund is the portion of the original finance charge that is applicable to all fully unexpired months in the contract as originally scheduled or if deferred, as deferred, following the date of prepayment. For this purpose, the applicable charge is the charge that would have been earned for that period, if the contract were not precomputed, by applying to the unpaid principal balance, according to the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled."

Section 2. Section 32-5-301, MCA, is amended to read:

"**32-5-301. Charges, refunds, penalties, filing fees.** (1) Every licensee hereunder may contract for and receive on any loan of money not exceeding $1,000 in principal amount:

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(a) charges at rates not in excess of $20 per year per $100 on that part of the principal amount of the loan not exceeding $500;

(b) $16 per year per $100 on that part of the principal amount of the loan exceeding $500 but not exceeding $1,000.

(2) The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in subsection (1) for the first $1,000 of the principal amount of any loan and may contract for and receive charges at rates not in excess of $12 per year per $100 on that part of the principal amount of any loan exceeding $1,000 but not exceeding $7,500.

(3) Charges in (1) and (2) shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(4) On loans of $90 or less a licensee may charge, in lieu of charges specified in (1) of this section, not in excess of $1 for each $5 of cash or credit advanced to the borrower up to the amount of $90. A period of at least 15 days must be allowed for the repayment of each $5 cash or credit advanced. Such charges cannot be assessed by any subterfuge or device on any loan over $90 or on any balance of $90 or less when the original loan was greater than $90.

(5) *(a)* When any loan contract, new loan, renewal, or otherwise *for a period of not more than 61 months* is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise, for a period of more than 61 months, is paid in full by cash one month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge which would have been earned for that contract, if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law based on the assumption that all payments were made as originally scheduled. For

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all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(6) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and said amount may be charged once and no more.

(7) (a) The licensee may include in the principal amount of any loan the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(8) No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. All balances due to a licensee from any person as a borrower or as an endorser, guarantor, or surety for any borrower or otherwise or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee shall have no right to collect or receive any charges.

(9) On any loan of money exceeding $7,500 in principal amount, a licensee may not make charges as provided in subsections (1) and (2) but shall make charges in accordance with the provisions of this subsection through subsection (12).

(10) On any loan of money exceeding $7,500 but not exceeding $25,000 in principal amount, a licensee may contract and receive charges at a rate not in excess of 2% per month on the principal amount as follows:

(a) Charges shall be computed on unpaid balances of the principal amount outstanding from time to time for the actual time outstanding. Each payment shall be applied first to accumulated charges and the remainder of the payment applied to the unpaid principal balance, except

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that if the amount of the payment is insufficient to pay the accumulated charges, unpaid charges continue to accumulate to be paid from the proceeds of subsequent payments and are not added to the principal balance.

(b) Charges made under this subsection may not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, the principal amount payable under such new loan contract may include any unpaid charges which have accrued. The resulting loan contract is a new and separate loan transaction for all purposes. The principal balance of a prior loan on which charges have been made pursuant to subsections (1) and (2) is the balance due after refund or credit is given to the borrower pursuant to subsection (5).

(11) For purposes of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(12) The provisions of subsections (5) and (6) do not apply to loans made under subsections (9) through (11).

(13) The amounts of $90, $500, $1,000, $7,500, and $25,000 in subsections (1), (2), (4), (9), and (10) are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

Section 3. **Limitation of rule of 78ths.** The sum of the monthly time balances method of computing interest or refunds on prepayment, which is also known as the rule of 78ths, may not be used in any loan agreement or retail installment contract unless the term of the loan or contract does not exceed 61 months.

Section 4. **Effective date.** This act is effective on passage and approval.

Section 5. **Applicability.** This act applies only to loan agreements and installment contracts entered into after the effective date of this act.

Approved March 18, 1983.

CHAPTER NO. 136

AN ACT TO REQUIRE APPRAISAL BY A QUALIFIED APPRAISER OF ANY STATE LAND TO BE PURCHASED, EXCHANGED, OR SOLD; AMENDING SECTIONS 77-1-202, 77-2-203, 77-2-211, AND 77-2-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-202, MCA, is amended to read:

"77-1-202. Powers and duties of board. *(1)* The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and

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disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) When acquiring land for the state, the board shall determine the value thereof after an appraisal by a qualified land appraiser."

Section 2. Section 77-2-203, MCA, is amended to read:

"**77-2-203. Exchange for private land.** (1) The board is authorized to exchange state land for private land provided that the private land is of equal or greater value, *as determined by the board after appraisal by a qualified land appraiser,* than the state land and as closely as possible equal in area. The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

(2) If the requirements of subsection (1) and 77-2-204 are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other bodies of water."

Section 3. Section 77-2-211, MCA, is amended to read:

"**77-2-211. Exchange of timbered, cut-over, or burned-over lands.** The board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange therefor may convey not to exceed an equal value, *as determined by the board after appraisal by a qualified land appraiser,* of similar state land. However, no such exchange may be made except that which in the opinion of the board will benefit the public interest. For the purpose of such an exchange, all state lands, including those referred to in 77-2-303(3), 77-2-311, and 77-5-101, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released."

Section 4. Section 77-2-323, MCA, is amended to read:

"**77-2-323. Sale procedure and limitation.** (1) At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale. Under the direction of the department the lands shall be sold to the highest qualified bidder under the following restrictions:

(a) No lands may be sold for less than the value *determined by the board after appraisal by a qualified land appraiser.*

(b) Tillable lands capable of producing agricultural crops may not be sold for less than $10 per acre.

(c) Lands principally valuable for grazing purposes may not be sold for less than $5 per acre.

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(2) The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(4) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than $50 or more than $1,000 to be determined by the board according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery thereof in the name of the state."

Approved March 18, 1983.

CHAPTER NO. 137

AN ACT TO CONFORM THE DEFINITION OF DEVELOPMENTALLY DISABLED FOR TREATMENT PURPOSES TO THAT FOR PURPOSES OF COMMUNITY-BASED PROGRAMS AND RESIDENTIAL FACILITIES; AMENDING SECTION 53-20-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from *a disability* attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals *if the disability originated before the individual attained age 18,* has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such *individual.*

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and

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social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of developmental disabilities and certified by the department of institutions or the department of social and rehabilitation services in accordance with standards of professional licensing boards, federal regulations, and the joint commissions on accreditation of hospitals.

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating, and habilitating the developmentally disabled on an inpatient basis, including the Boulder River school and hospital and the Eastmont training center. The term does not include a group home, foster home, or halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this part.

(10) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health."

Approved March 18, 1983.

CHAPTER NO. 138

AN ACT TO PROVIDE THAT THE RECLAMATION BOND REQUIRED BY THE OPENCUT MINING ACT MAY BE GREATER THAN $1,000 PER ACRE IF THE DEPARTMENT OF STATE LANDS DETERMINES, IN WRITING, THAT THE COST OF RESTORING THE DISTURBED LAND EXCEEDS $1,000 PER ACRE; AMENDING SECTION 82-4-433, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-433, MCA, is amended to read:

"82-4-433. Bond. (1) A bond required to be filed in this part by the operator shall be in such form as the board prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part and all rules of the board. The bond shall be

signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The bond shall be in an amount not to exceed the costs of restoration required by this part as determined by the board. *The amount of the bond* may not be less than $200 or more than $1,000 per acre *unless the department determines, in writing, that the cost of restoration of the land exceeds $1,000 per acre. Upon such a determination, the bond amount must be set by the board at the cost of restoring the land.*

(2) In lieu of the bond, the operator may deposit with the board cash and government securities or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the board, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety may be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the mined acreages have been reclaimed as provided under the contract and the reclamation has been approved and the bond or security has been released by the board. The bond or security shall cover only actual mined acreages and may be increased or reduced to cover only such acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the board pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice thereof from the board, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the board may suspend the contract of the operator to conduct operations upon the land described in the contract until the substitution has been made.

(4) The board shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, he shall notify the board thereof. If the board releases the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately."

Approved March 18, 1983.

CHAPTER NO. 139

AN ACT TO INCREASE THE AMOUNT OF TIMBER SUBJECT TO THE 10-DAY MINIMUM ADVERTISEMENT PERIOD PRIOR TO SALE BY THE DEPARTMENT OF STATE LANDS FROM 200,000 TO 1 MILLION BOARD FEET; AMENDING SECTION 77-5-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-201, MCA, is amended to read:

"77-5-201. Sale of timber. (1) Under the direction of the board, the department may sell the timber crop and other crops of the forests after

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examination, estimate, appraisal, and report and under such rules as may be established by the board.

(2) Timber proposed for sale in excess of 100,000 board feet shall be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale.

(3) In cases of emergency due to fire, insect, fungus, parasite, or blowdown, timber proposed for sale not in excess of *1 million* board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any or all bids, upon approval of the board, or it shall award the sale to the highest responsible bidder."

Approved March 18, 1983.

CHAPTER NO. 140

AN ACT TO PERMIT SUPPLEMENTARY LICENSEES UNDER THE CONSUMER LOAN ACT TO MAKE LOANS IN ANY AMOUNT; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-301, 32-5-306, 32-5-402, AND 32-5-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business.

(2) "License" means one or both of the licenses provided for by this chapter.

(3) "Licensee" means the person holding a license.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Consumer type loan business" means the business of making loans generally repayable in substantially equal installments."

Section 2. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in *any amount* and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, which in the aggregate are greater than those provided by 31-1-107(1),

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except as provided in and authorized by this chapter. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, or a person engaged in business as a licensed pawnbroker or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

(3) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever."

Section 3. Section 32-5-201, MCA, is amended to read:

"32-5-201. License application and fees — supplementary license. (1) (a) A place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with this chapter as to each license.

(b) Application for a license shall be on a form prescribed and furnished by the department.

(c) A licensee may move his place of business from one place to another within a county without obtaining a new license, provided he obtains written permission from the department.

(d) With each application the applicant shall submit $50 as an investigation fee and $125 as a license fee. The license fee shall be returned to the applicant if the application is denied. The license year is the calendar year, and the license fee for any period less than 6 months is $62.50. A license remains in force until surrendered, suspended, or revoked.

(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than $1,000 to any borrower or to any borrower and spouse except under the following circumstances:

(a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of $1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of $75 per calendar year or one-half of said sum for any period less than 6 months.

(b) The department shall grant, on application, a supplementary license to a holder of a license provided for in subsection (1).

(c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.

(d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.

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(3) All moneys collected under the authority of this chapter shall be paid into the state treasury by the department.

(4) The *amount* of $1,000 in subsection (2) *is* subject to change pursuant to the provisions of 32-5-104."

Section 4. Section 32-5-301, MCA, is amended to read:

"32-5-301. Charges, refunds, penalties, filing fees. (1) Every licensee hereunder may contract for and receive on any loan of money not exceeding $1,000 in principal amount:

(a) charges at rates not in excess of $20 per year per $100 on that part of the principal amount of the loan not exceeding $500;

(b) $16 per year per $100 on that part of the principal amount of the loan exceeding $500 but not exceeding $1,000.

(2) The holder of a supplementary license may contract for and receive charges at rates authorized for licensees in subsection (1) for the first $1,000 of the principal amount of any loan and may contract for and receive charges at rates not in excess of $12 per year per $100 on that part of the principal amount of any loan exceeding $1,000 but not exceeding $7,500.

(3) Charges in (1) and (2) shall be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(4) On loans of $90 or less a licensee may charge, in lieu of charges specified in (1) of this section, not in excess of $1 for each $5 of cash or credit advanced to the borrower up to the amount of $90. A period of at least 15 days must be allowed for the repayment of each $5 cash or credit advanced. Such charges cannot be assessed by any subterfuge or device on any loan over $90 or on any balance of $90 or less when the original loan was greater than $90.

(5) When any loan contract, new loan, renewal, or otherwise, is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(6) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason

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of default or extension agreement, may be 5% of the amount past due, and said amount may be charged once and no more.

(7) (a) The licensee may include in the principal amount of any loan the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(8) No further or other charges shall be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. All balances due to a licensee from any person as a borrower or as an endorser, guarantor, or surety for any borrower or otherwise or due from any husband or wife, jointly or severally, shall be considered a part of any loan being made by a licensee to such person for the purpose of computing interest or charges. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee shall have no right to collect or receive any charges.

(9) On any loan of money exceeding $7,500 in principal amount, a licensee may not make charges as provided in subsections (1) and (2) but shall make charges in accordance with the provisions of this subsection through subsection (12).

(10) On any loan of money exceeding $7,500 in principal amount, a licensee may contract and receive charges at a rate not in excess of 2% per month on the principal amount as follows:

(a) Charges shall be computed on unpaid balances of the principal amount outstanding from time to time for the actual time outstanding. Each payment shall be applied first to accumulated charges and the remainder of the payment applied to the unpaid principal balance, except that if the amount of the payment is insufficient to pay the accumulated charges, unpaid charges continue to accumulate to be paid from the proceeds of subsequent payments and are not added to the principal balance.

(b) Charges made under this subsection may not be payable in advance or compounded. However, if part or all of the consideration for a new loan

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contract is the unpaid principal balance of a prior loan, the principal amount payable under such new loan contract may include any unpaid charges which have accrued. The resulting loan contract is a new and separate loan transaction for all purposes. The principal balance of a prior loan on which charges have been made pursuant to subsections (1) and (2) is the balance due after refund or credit is given to the borrower pursuant to subsection (5).

(11) For purposes of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(12) The provisions of subsections (5) and (6) do not apply to loans made under subsections (9) through (11).

(13) The amounts of $90, $500, $1,000, *and* $7,500 in subsections (1), (2), (4), (9), and (10) are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

Section 5. Section 32-5-306, MCA, is amended to read:

"32-5-306. Insurance. (1) No insurance of any kind shall be written by a licensee or employee, affiliate, or associate of the licensee, in connection with any loan except as hereinafter provided.

(2) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) When the principal amount of the loan exceeds $300 exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(4) Subject to the laws of this state, credit life insurance and credit disability insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds $300, exclusive of the portion thereof attributable to insurance premiums and charges.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker, or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate, or

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associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this chapter.

(6) A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

(7) The *amount* of $300 in subsections (3) and (4) *is* subject to change pursuant to 32-5-104 on adjustment of dollar amounts."

Section 6. Section 32-5-402, MCA, is amended to read:

"32-5-402. Investigations. The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

(1) a licensee; *or*

(2) a person whom the department has reason to believe is violating or is about to violate this chapter."

Section 7. Section 32-5-501, MCA, is amended to read:

"32-5-501. Open-end loans. (1) A holder of a supplementary license may make open-end loans and may contract for and receive charges at a rate not in excess of the rate set forth in 32-5-301(10) on unpaid balances outstanding from time to time for the actual time outstanding.

(2) A holder of a supplementary license may not compound charges by adding any unpaid charges authorized by this section to the unpaid principal balance of the borrower's account; however, the unpaid principal balance may include the fees paid to third parties as authorized by 32-5-504 and by 32-5-301(7)."

Approved March 18, 1983.

CHAPTER NO. 141

AN ACT UPDATING THE LIST OF CONTROLLED SUBSTANCES CONTAINED IN STATE LAW TO CONFORM WITH CONTROLLED SUBSTANCES LISTED IN THE CODE OF FEDERAL REGULATION, 1308.11-15; AMENDING SECTIONS 50-32-222, 50-32-224, 50-32-226, 50-32-229, AND 50-32-232, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-32-222, MCA, is amended to read:

"50-32-222. Specific dangerous drugs included in Schedule I. *Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.*

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(1) *Opiates. Unless specifically excepted or listed in another schedule,* any of the following opiates, including *its* isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of *such* isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetylmethadol;

(b) allylprodine;

(c) alphacetylmethadol;

(d) alphameprodine;

(e) alphamethadol;

(f) alpha-methylfentanyl(N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(g) benzethidine;

(h) betacetylmethadol;

(i) betameprodine;

(j) betamethadol;

(k) betaprodine;

(l) clonitazene;

(m) dextromoramide;

(n) diampromide;

(o) diethylthiambutene;

(p) difenoxin;

(q) dimenoxadol;

(r) dimepheptanol;

(s) dimethylthiambutene;

(t) dioxaphetyl butyrate;

(u) dipipanone;

(v) ethylmethylthiambutene;

(w) etonitazene;

(x) etoxeridine;

(y) furethidine;

(z) hydroxypethidine;

(aa) ketobemidone;

(bb) levomoramide;

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(cc) levophenacylmorphan;

(dd) morpheridine;

(ee) noracymethadol;

(ff) norlevorphanol;

(gg) normethadone;

(hh) norpipanone;

(ii) phenadoxone;

(jj) phenampromide;

(kk) phenomorphan;

(ll) phenoperidine;

(mm) piritramide;

(nn) proheptazine;

(oo) properidine;

(pp) propiram;

(qq) racemoramide;

(rr) sufentanil;

(ss) tilidine; and

(tt) trimeperidine.

(2) *Opium derivatives. Unless specifically excepted or listed in another schedule,* any of the following opium derivatives, *its* salts, isomers, and salts of isomers whenever the existence of *such* salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine;

(b) acetyldihydrocodeine;

(c) benzylmorphine;

(d) codeine methylbromide;

(e) codeine-n-oxide;

(f) cyprenorphine;

(g) desomorphine;

(h) dihydromorphine;

(i) drotebanol;

(j) etorphine;

(k) heroin;

(l) hydromorphinol;

(m) methyldesorphine;

(n) methyldihydromorphine;

(o) morphine methylbromide;

(p) morphine methylsulfonate;

(q) morphine-n-oxide;

(r) myrophine;

(s) nicocodeine;

(t) nicomorphine;

(u) normorphine;

(v) *pholcodine;* and

(w) thebacon.

(3) *Hallucinogenic substances. Unless specifically excepted or listed in another schedule,* any material, compound, mixture, or preparation *that* contains any quantity of the following hallucinogenic *substances or any of its* salts, isomers, and salts of isomers whenever the existence of *such* salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) 3,4-methylenedioxy amphetamine;

(b) 5-methoxy-3,4-methylenedioxy amphetamine;

(c) 3,4,5-trimethoxy amphetamine;

(d) bufotenine;

(e) diethyltryptamine;

(f) dimethyltryptamine;

(g) *4-methyl-2,5-dimethoxy-amphetamine;*

(h) ibogaine;

(i) lysergic acid diethylamide;

(j) marihuana;

(k) mescaline;

(l) peyote;

(m) n-ethyl-3-piperidyl benzilate;

(n) n-methyl-3-piperidyl benzilate;

(o) psilocybin;

(p) psilocyn;

(q) tetrahydrocannabinols;

(r) 2,5-dimethoxyamphetamine;

(s) 4-bromo-2,5-dimethoxy-amphetamine;

(t) 4-methoxyamphetamine;

(u) ethylamine analog of phencyclidine;

(v) pyrrolidine analog of phencyclidine; and

(w) thiophene analog of phencyclidine.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) mecloqualone.

(5) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) fenethylline; and

(b) n-ethylamphetamine.

(6) For purposes of subsection (3) only, the term "isomer" includes the optical, position, and geometric isomers.

(7) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols *listed in subsection (3)* shall automatically be rescheduled from Schedule I to Schedule II."

Section 2. Section 50-32-224, MCA, is amended to read:

"50-32-224. Specific dangerous drugs included in Schedule II. *Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.*

(1) *Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule,* any of the following *substances*, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by *a* combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, *excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone and their respective salts, but including the following:*

(i) raw opium;

(ii) opium extracts;

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(iii) opium fluid extracts;

(iv) powdered opium;

(v) granulated opium;

(vi) tincture of opium;

(vii) codeine;

(viii) ethylmorphine;

(ix) etorphine hydrochloride;

(x) hydrocodone;

(xi) hydromorphone;

(xii) metopon;

(xiii) morphine;

(xiv) oxycodone;

(xv) oxymorphone; and

(xvi) thebaine;

(b) any salt, compound, derivative, or preparation thereof *that* is chemically equivalent or identical with any of the *substances* referred to in subsection *(1)*(a) *of this section, except that these substances do not include* the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof *that* is chemically equivalent or identical with any of these *substances, except that these substances do not include* decocainized coca leaves or *extraction of coca leaves,* which *extractions* do not contain cocaine or ecgonine; *and*

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) *Opiates. Unless specifically excepted or listed in another schedule,* any of the following opiates, including *its* isomers, esters, ethers, salts, and salts of isomers, *esters, and ethers* whenever the existence of *such* isomers, esters, ethers, and salts is possible within the specific chemical designation, *dextrorphan and levopropoxyphene excepted:*

(a) alphaprodine;

(b) anileridine;

(c) bezitramide;

(d) dihydrocodeine;

(e) diphenoxylate;

(f) fentanyl;

(g) isomethadone;

(h) levomethorphan;

(i) levorphanol;

(j) metazocine;

(k) methadone;

(l) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

(m) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

(n) pethidine *(meperidine)*;

(o) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(p) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(q) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(r) phenazocine;

(s) piminodine;

(t) racemethorphan;

(u) racemorphan; *and*

(v) bulk dextropropoxyphene (nondosage forms).

(3) *Stimulants. Unless specifically excepted or listed in another schedule,* any material, compound, mixture, or preparation *that* contains any quantity of the following *substances* having a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) methamphetamine, its salts, isomers, and salts of *its* isomers; *and*

(d) methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) amobarbital;

(b) methaqualone;

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(c) pentobarbital;

(d) phencyclidine; and

(e) secobarbital.

(5) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:

(a) immediate precursor to amphetamine and methamphetamine:

(i) phenylacetone;

(b) immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine; and

(ii) 1-piperidinocyclohexanecarbonitrile (PCC)."

Section 3. Section 50-32-226, MCA, is amended to read:

"50-32-226. Specific dangerous drugs included in Schedule III. *Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.*

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;

(b) chlorphentermine;

(c) clortermine; and

(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation *that* contains any quantity of the following *substances* having a depressant effect on the central nervous system:

(a) any *substance that* contains any quantity of a derivative of barbituric acid or any salt *thereof*;

(b) chlorhexadol;

(c) glutethimide;

(d) lysergic acid;

(e) lysergic acid amide;

(f) methyprylon;

(g) sulfondiethylmethane;

(h) sulfonethylmethane;

(i) sulfonmethane;

(j) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule; and

(k) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or *its* salts *calculated as the free anhydrous base or alkaloid in the following limited quantities*:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more *active nonnarcotic* ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts."

Section 4. Section 50-32-229, MCA, is amended to read:

"50-32-229. Specific dangerous drugs included in Schedule IV. *Schedule IV consists of the drugs and other substances, by whatever*

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official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(b) dextropropoxyphene (alpha-(+)-4-dimethylamino 1,2-diphenyl-3-methyl-2-propionoxybutane).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation *that* contains any quantity of the following *substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:*

(a) alprazolam;

(b) barbital;

(c) chloral betaine;

(d) chloral hydrate;

(e) chlordiazepoxide;

(f) clonazepam;

(g) clorazepate;

(h) diazepam;

(i) ethchlorvynol;

(j) ethinamate;

(k) flurazepam;

(l) halazepam;

(m) lorazepam;

(n) mebutamate;

(o) methohexital;

(p) meprobamate;

(q) methylphenobarbital *(mephobarbital);*

(r) oxazepam;

(s) paraldehyde;

(t) petrichloral;

(u) phenobarbital;

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(v) prazepam; and

(w) temazepam.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

(a) fenfluramine.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) diethylpropion;

(b) mazindol;

(c) pemoline, including organometallic complexes and chelates thereof;

(d) phentermine;

(e) pipradrol; and

(f) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts:

(a) pentazocine."

Section 5. Section 50-32-232, MCA, is amended to read:

"50-32-232. Specific dangerous drugs included in Schedule V. *Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.*

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs *or its salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (1)(a) through (1)(f), which include* one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic *drugs* alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

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(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Loperamide."

Approved March 18, 1983.

CHAPTER NO. 142

AN ACT TO CLARIFY THE DESIGNATION PROCESS FOR CERTAIN COAL BOARD IMPACT GRANTS; AMENDING SECTION 90-6-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-207, MCA, is amended to read:

"90-6-207. Priorities for impact grants. (1) The department of commerce shall *annually* designate counties, *incorporated cities and* towns, school districts, and other governmental units which have had or expect to have *as a result of the impact of coal development a net* increase in estimated population of at least 10% *over one of the 3-year periods specified in subsection (2).* The coal board shall, subject to the appropriations of the legislature, award at least 50% of all grants awarded to governmental units and state agencies for meeting the needs caused by coal development each year to these designated governmental units.

(2) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(3) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

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(4) All funds placed in the local impact and educational trust fund account established under this part, subject to the limitations imposed by 90-6-211, shall be subject to appropriations by the legislature for use related to local impact or for transfer to a permanent trust for education."

Approved March 18, 1983.

CHAPTER NO. 143

AN ACT TO CLARIFY THAT A MUTUAL INSURER FORMED TO PROVIDE INSURANCE TO MEMBERS OF AN ASSOCIATION OR OTHER ORGANIZATION MAY REFUSE TO RENEW A CONTRACT OF INSURANCE IF THE INSURED WITHDRAWS FROM THE ASSOCIATION OR ORGANIZATION; AMENDING SECTION 33-18-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-18-102, MCA, is amended to read:

"33-18-102. Unfair methods or deceptive practices prohibited — refusal to renew. (1) No person shall engage in this state in any trade practice which is defined in this chapter as or determined pursuant to this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(2) Nothing in this chapter shall be construed to prevent an insurer owned or controlled by an association or organization, *including a mutual insurer formed to provide insurance to the members of an association or organization,* from refusing to renew a casualty or liability policy for nonpayment of dues to the association or organization if payment of dues is a condition for obtaining or continuing such insurance."

Approved March 19, 1983.

CHAPTER NO. 144

AN ACT REQUIRING A MANUFACTURER TO HONOR THE EXPRESS WARRANTY ON A NEW MOTOR VEHICLE; PROVIDING FOR REPLACEMENT OF OR REFUND FOR A NEW MOTOR VEHICLE THAT DOES NOT CONFORM TO ITS WARRANTY AFTER A REASONABLE NUMBER OF ATTEMPTS HAVE BEEN MADE TO CONFORM THE VEHICLE TO ITS WARRANTY; EXTENDING THE WARRANTY PERIOD BECAUSE OF DELAYS CAUSED BY DISASTERS; ALLOWING OTHER REMEDIES; EXEMPTING A DEALER FROM LIABILITY; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For purposes of this [act], the following definitions apply:

(1) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the

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result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(2) "Motor vehicle" means a vehicle propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold in this state. The term does not include a motor home as defined in 61-1-130.

(3) "Warranty period" means the term of an express agreement or the period ending 1 year after the date of the original delivery to the consumer of a new motor vehicle, whichever is earlier.

Section 2. **Warranty enforceable.** If a consumer notifies in writing the manufacturer or its agent during the warranty period that a new motor vehicle does not conform to all applicable express warranties, the repairs necessary to conform the new motor vehicle to the express warranties shall be made by or at the expense of the warrantor, regardless of the expiration of the warranty period after notification of nonconformity is given by the consumer.

Section 3. **Replacement for nonconformity.** (1) If after a reasonable number of attempts the manufacturer or its agent or authorized dealer is unable, during the warranty period, to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value or safety of the motor vehicle to the consumer, the manufacturer shall replace it with a new motor vehicle of the same model and style and of equal value, unless, for reasons of lack of availability, such replacement is impossible, with a vehicle of comparable market value.

(2) As an alternative to replacement, the manufacturer may accept return of the new motor vehicle from the consumer upon refund to him of the full purchase price, excluding all sales tax, license fee, registration fees, and any similar governmental charges less a reasonable allowance for the consumer's use of the motor vehicle. The refund shall be paid to the consumer and to a lienholder, if any, in proportion to their interests. A reasonable allowance for use is an amount directly attributable to use by the consumer and any previous consumers prior to his first written report of the nonconformity to the manufacturer or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity.

Section 4. **Reasonable number of attempts.** A reasonable number of attempts to conform a new motor vehicle to the applicable express warranties is presumed to have been made for purposes of [section 3(1)] if:

(1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agent or authorized dealer during the warranty period but the nonconformity continues to exist; or

(2) the vehicle is out of service because of nonconformity for a cumulative total of 30 or more business days during the warranty period after notification of the manufacturer, agent, or dealer.

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Section 5. **Warranty extension.** The warranty period of an express warranty is extended to equal the time that repair services are not available because of war or invasion or because of strike or fire, flood, or other natural disaster. The presumption provided herein may not apply against a manufacturer who has not received prior written notification from or on behalf of the consumer and has not had an opportunity to cure the alleged defect.

Section 6. **Provisions nonexclusive.** The provisions of this [act] do not limit the rights or remedies available to a consumer under any other law.

Section 7. **Exhaustion of remedies under federal law.** The provisions of [section 3] are not applicable against a manufacturer who has established an informal dispute settlement procedure in substantial compliance with the provisions of Title 16, Code of Federal Regulations, part 703, as those provisions read on October 1, 1983, unless the consumer has first resorted to that procedure without satisfaction.

Section 8. **Dealer exemption.** Nothing in [this act] imposes any liability on a dealer or creates a cause of action by a consumer against a dealer under section 3.

Section 9. **Applicability.** [This act] applies only to covered motor vehicles purchased after October 1, 1983.

Approved March 19, 1983.

CHAPTER NO. 145

AN ACT TO CHANGE THE PROVISION OF 50-PERCENT REDUCTION FOR THE AMOUNT OF PENSION RECEIVED IN CALCULATING UNEMPLOYMENT COMPENSATION TO A PROPORTIONATE AMOUNT WHERE THE CLAIMANT HAS CONTRIBUTED IN PART TO THE PENSION; AMENDING SECTION 39-51-2203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2203, MCA, is amended to read:

"39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1) Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and contributed to in whole or in part by a base-period employer. *However, the amount by which weekly benefits are to be reduced shall be determined by the ratio of the employer's contributions to the fund from which the payment is made so that the claimant will receive credit only for the proportion of his contributions to that fund.*

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(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the division shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981."

Approved March 19, 1983.

CHAPTER NO. 146

AN ACT TO AMEND SECTION 13-2-102, MCA, TO ALLOW THE APPOINTMENT OF DEPUTY REGISTRARS IN A COUNTY TO BE PERMISSIVE RATHER THAN MANDATORY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-102, MCA, is amended to read:

"13-2-102. Deputy registrars. (1) A notary public who fulfills the requirements of subsection (4) may be a deputy registrar in the county in which he resides.

(2) (a) The governing body of each county *may at its discretion* appoint two *or more* deputy registrars for each precinct in the county before March 15 of each even-numbered year.

(b) The number of deputy registrars, *if appointed*, shall be equally divided between the political parties meeting the requirements of 13-10-601 unless one or more of the parties fail to submit the list required in subsection (3) or submit an incomplete list. A political party which qualifies under 13-10-501 may request the appointment of deputy registrars and shall submit a list for such appointments within 30 days of such qualification.

(c) An appointed deputy registrar must be a resident elector in the precinct for which appointed but may register electors in all precincts in the county.

(3) Deputy registrars shall be appointed from lists of individuals recommended by the qualified political parties, submitted by February 1 of even-numbered years. If no lists are submitted by political parties, the governing body may appoint two deputy registrars for each precinct without party recommendations.

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(4) Each election administrator shall provide training to all deputy registrars in registration procedures and shall issue a certificate to each deputy registrar on successful completion of the training. A deputy registrar may not register voters without a current certificate. All certificates expire on March 15 of each even-numbered year.

(5) Deputy registrars shall forward all completed cards to the county registrar within 3 days. Registration cards properly executed before a deputy registrar prior to the close of registration shall be accepted for 3 days after the close of registration."

Approved March 19, 1983.

CHAPTER NO. 147

AN ACT CLARIFYING STUDENT EXCLUSION FROM MEMBERSHIP IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTION 19-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-403, MCA, is amended to read:

"**19-3-403. Exclusions.** The following persons may not become members of the retirement system:

(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors, unless there is a written contract which specifies the creation of an employer-employee relationship for purposes of retirement coverage under The Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of 120 working days in any fiscal year who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been

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so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of his employment by the state, is required to become a member of any other system described in this subsection shall be considered, solely for the purposes of making normal contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system.

(b) For the purpose of this subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this chapter are not considered, because of such receipt, members of any other retirement or pension system.

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth- and seventh-class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed for 6 months or less by the legislature or the legislative council to perform work related to the legislative session who do not file with the board an election in writing to become members;

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(13) *full-time* students *employed at and attending the same* public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person so excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credit for the excluded service under the provisions of 19-3-505;

(14) effective October 1, 1978, employees whose positions are funded under the federal Comprehensive Employment and Training Act (CETA) and who file with the board elections not to become members. An employee who exercises his election is considered terminated and is eligible for a refund under 19-3-703, and any employer contributions made on his behalf after October 1, 1978, must be returned to the funding agency. If he is subsequently transferred to non-CETA employment and consequently becomes a member, he may revoke his election within 1 year after the transfer date by filing a written revocation with the board and he will then be eligible to qualify the service previously excluded by this subsection under the provisions of 19-3-505.

(15) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city whichever is later;

(16) all former members receiving a retirement allowance other than as a beneficiary serving in employment if that employment does not exceed 60 working days in any fiscal year. These former members must be reinstated into membership on the 61st working day in any fiscal year unless they elect to return to membership prior to that day."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 19, 1983.

CHAPTER NO. 148

AN ACT REQUIRING THE APPELLANT IN A CRIMINAL APPEAL TO ORDER IN WRITING A TRANSCRIPT OF THE TRIAL COURT PROCEEDINGS; AMENDING SECTION 46-20-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-20-302, MCA, is amended to read:

"46-20-302. Transcript of proceedings. (1) Within 10 days after filing the notice of appeal, the appellant shall order *in writing* from the reporter a transcript of *the entire lower court proceedings or* such parts

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of the proceedings not already on file as he deems necessary for inclusion in the record. *When ordering the transcript from the reporter, the appellant shall transmit a copy of the written order to the clerk of the supreme court.*

(2) In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order, or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory or to support a specific finding of fact by the trial court is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer, or finding.

(3) Unless the entire transcript is to be included, the appellant shall within the time above provided file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

(4) The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost. If the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent. The district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

(5) The reporter shall certify the correctness of the transcript."

Approved March 22, 1983.

CHAPTER NO. 149

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE WATER DEVELOPMENT PROGRAM; AMENDING SECTIONS 17-5-704, 85-1-604, 85-1-605, 85-1-613, 85-1-616, AND 85-1-617, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-704, MCA, is amended to read:

"17-5-704. Investment of funds. (1) Money in the coal severance tax bond subfund, the coal severance tax permanent subfund, and the coal severance tax income subfund must be invested in accordance with the investment standards for coal severance tax funds except as provided in subsection (2). Income and earnings from all subfunds must be transferred

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to and retained in the coal severance tax income subfund *until appropriated by the legislature.*

(2) Beginning on July 1, 1983, the legislature shall appropriate 15% of the income and earnings from all subfunds to be deposited to the coal severance tax permanent subfund each year. The funds appropriated to the coal severance tax permanent subfund under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature."

Section 2. Section 85-1-604, MCA, is amended to read:

"85-1-604. Water development earmarked account created — revenues allocated — limitations on appropriations from account. (1) There is created a water development earmarked account within the earmarked revenue fund established in 17-2-102.

(2) There shall be paid into the water development earmarked account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust account as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the water development sinking account above debt service requirements as provided in and subject to the conditions of 85-1-619;

(d) any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under 85-1-617; and

(e) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the water development earmarked account for the following purposes and subject to the following conditions:

(a) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(a) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(b).

(b) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(a) and only that amount may be appropriated from the account for:

(i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;

(ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;

(iii) the development of the hydropower potential of state-owned dams;

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(iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;

(v) the promotion of the development of offstream and tributary storage;

(vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;

(vii) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and

(viii) any other expenditures that meet the policies and objectives of the state water development program.

(c) An amount less than or equal to that paid into the account from the *sources provided for in (c) through (e) of subsection (2)* and only that amount may be appropriated from the account for loans and grants for water development projects and activities; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, *and* office space; *for the servicing of loans, including arrangements for obtaining security interests;* and *for* other necessities incurred in administering the loans and grants."

Section 3. Section 85-1-605, MCA, is amended to read:

"85-1-605. Grants and loans to state and local governments. (1) The department may recommend to the legislature that grants and loans be made from coal severance tax proceeds deposited in the water development earmarked account, *that* loans be made from water development bond proceeds deposited in the water development clearance account, *and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance* to a department, agency, board, commission, or other division of state government or to a city, county, or other political subdivision or local government body of the state. The legislature may approve by appropriation or other appropriate means those grants and loans it finds consistent with the policies and purposes of the program.

(2) The grants and loans provided for by this section may be made for the purchase, lease, development, or construction of water development projects and activities for the conservation, management, use, development, or protection of the water and related agricultural, land, fish, wildlife, and water recreation resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for and the rehabilitation, expansion, and modification of water development projects; for other water development projects and activities that will enhance the water resources of the state; and for similar purposes approved by the legislature."

Section 4. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) No loan for a water development project or activity may be made from the water development earmarked

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or clearance account that exceeds the least of *$200,000*, 10% of the estimated total funds potentially available for loans in the water development earmarked and clearance accounts in the biennium in which the loan will be made, or 80% of the fair market value of the security given therefor. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors it considers important.

(2) The period for repayment of loans may not exceed 30 years.

(3) The board shall from time to time establish the interest rate at which loans may be made under this part."

Section 5. Section 85-1-616, MCA, is amended to read:

"85-1-616. Administration of loans and grants. The department shall:

(1) administer the loan and grant program established by this part;

(2) service loans made or contract and pay for the servicing of loans, including arrangements for obtaining security interests; and

(3) collect reasonable fees or charges for the servicing of loans, including arrangements for obtaining security interests. *The fees and charges must be deposited in the water development earmarked account pursuant to 85-1-604.*"

Section 6. Section 85-1-617, MCA, is amended to read:

"85-1-617. Issuing bonds. (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell water development bonds of the state in the amount and manner it considers necessary and proper to finance the water development loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of water development bonds may be issued by the board of examiners, upon request of the board of natural resources and conservation, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of water development bonds, the interest rates and the maturities and any mandatory redemption provisions

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thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the water development sinking account will in the judgment of the board of examiners be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) There is created a water development clearance account within the bond proceeds and insurance clearance fund established in 17-2-102.

(6) All proceeds of bonds issued under this section, other than refunding bonds, must be deposited in the water development clearance account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development *earmarked account pursuant to 85-1-604.* All proceeds of refunding bonds must be deposited in the water development sinking account and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Effective date.** This act is effective July 1, 1983.

Approved March 22, 1983.

CHAPTER NO. 150

AN ACT TO ALLOW A NONPUBLIC ELEMENTARY SCHOOL TO REQUEST THAT THE BOARD OF PUBLIC EDUCATION ACCREDIT THE SCHOOL; AMENDING SECTION 20-7-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-102, MCA, is amended to read:

"20-7-102. Accreditation of schools. (1) Every school year the conditions under which each elementary school, middle school, junior high

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school, and high school operates shall be reviewed by the superintendent of public instruction to determine each school's compliance with the standards of accreditation. The accreditation status of every school shall then be established by the board of public education upon the recommendation of the superintendent of public instruction, and notification of such status for the applicable school year shall be given to each district.

(2) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1)."

Approved March 22, 1983.

CHAPTER NO. 151

AN ACT TO GENERALLY REVISE THE LAW GOVERNING THE MONTANA SCHOOL FOR THE DEAF AND BLIND; AMENDING SECTIONS 20-8-101, 20-8-102, 20-8-104 THROUGH 20-8-107, 20-8-109 THROUGH 20-8-113, AND 20-8-116, MCA; REPEALING SECTIONS 20-8-114, 20-8-115, AND 20-8-117 THROUGH 20-8-119, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-101, MCA, is amended to read:

"20-8-101. State school for deaf and blind — independent institution. The school for the deaf and blind, formerly located at Boulder in connection with the Montana state training school but transferred before July 1, 1943, to the city of Great Falls, shall be known and designated as the Montana school for the deaf and blind and shall be conducted as a separate and independent unit and institution of the state of Montana under the general supervision, direction, and control of the board of public education. However, the transfer of that school or any change in the name thereof or in the objects or purposes thereof may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school prior to July 1, 1943."

Section 2. Section 20-8-102, MCA, is amended to read:

"20-8-102. Objects and purposes. The Montana school for the deaf and blind shall be a residential and boarding school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and for such reason are unable to receive a sufficient or proper education in the public schools of the state. The object and purpose of such school shall be to furnish and provide, by the use of specialized methods and systems, an ordinary public school education and to teach such trades and vocations as will enable children attending such school to become independent and self-sustaining citizens. Increased and additional facilities shall be provided from time to time for the more thorough and successful training of those who show a special

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aptitude for becoming proficient at such trades or vocations. In the interest of economy and increased opportunities for vocational education and training and in order that pupils may be practically taught such trades and vocations, so much of all carpentering, printing, painting, baking, sewing, and other or similar work necessary to be done for and in and about the school, as the superintendent of the school may deem practical, shall be done by such pupils under competent teachers and *specialists* employed for such purpose, and this requirement shall apply to both male and female pupils."

Section 3. Section 20-8-104, MCA, is amended to read:

"20-8-104. Eligibility of children for admittance. On proper application being made therefor, *as prescribed by the rules of the board of public education,* deaf and blind children who are not more than 18 years of age residing within the state of Montana and nonresident children who are not more than 18 years of age, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability may be admitted to such school."

Section 4. Section 20-8-105, MCA, is amended to read:

"20-8-105. When duty of parent or guardian of child to make application for admission of child — penalty. (1) Every parent, guardian, or other person having the custody or control of any child between the ages of 5 and 18 years whose hearing or sight is so defective that such child cannot be properly educated in the public schools of the state shall make application to the superintendent of said school for admission to such school for at least 9 months during each school year for a period of 10 years, unless such child is being taught in a private school or in a similar institution in another state which affords such child an education to the same extent as such child can receive in the Montana school for the deaf and blind or unless such child be found, for any reason, to be ineligible to admission to such school. If such child is being taught in a private school or in a similar institution in another state, such attendance must be for at least 9 months in each year for 10 years, unless such child shall arrive at the age of *18* years or shall have become self-sustaining before the expiration of such 10-year period.

(2) The failure of any parent, guardian, or other person having the custody or control of any blind or deaf child to comply with the provisions of this section shall be deemed a misdemeanor and punishable by a fine of not less than $5 or more than $25 for the first offense and not less than $25 or more than $50 for each subsequent offense. Upon conviction of any parent, guardian, or person having custody or control of any such child of a failure to comply with the provisions of this section, the court in which such conviction is had shall enter in its docket an order directing such parent, guardian, or other person to comply with the provisions of this section within 10 days thereafter and shall deliver a copy of such order to such parent, guardian, or other person."

Section 5. Section 20-8-106, MCA, is amended to read:

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"**20-8-106. Duration of attendance at school — transfer.** *(1)* Every child admitted to such school shall be entitled to attend such school until reaching the age of 21 years unless the board of public education and superintendent determine that attendance at the school will not benefit the child, provided that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of public education and superintendent.

(2) Transfer of a student from the school to another educational placement must be in accordance with rules of the board of public education."

Section 6. Section 20-8-107, MCA, is amended to read:

"**20-8-107. Admission of nonresident children and advance payment of cost — Indian children.** (1) Deaf and blind children who are not residents of the state of Montana, upon application being made therefor, may be admitted to the school, subject to all eligibility requirements prescribed for children who are residents of the state, provided that for each such nonresident child there shall be paid to the school in advance a sum of money the amount of which shall be determined by a careful estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application, and provided further that no nonresident child shall be admitted to the school except when the full capacity thereof is not required for children who are residents of the state.

(2) Indian children who are Montana residents and wards of the United States shall be eligible to and shall be admitted to such school on the same terms as residents."

Section 7. Section 20-8-109, MCA, is amended to read:

"**20-8-109. Time of regular school term.** The regular term of school shall *be as provided in 20-1-301.*"

Section 8. Section 20-8-110, MCA, is amended to read:

"**20-8-110. Property vested in school.** All lands heretofore granted by the government of the United States to the state of Montana for the use and benefit of the deaf and dumb are hereby set apart and declared to be for the use and benefit in perpetuity of the Montana school for the deaf and blind, and all funds arising from the sale or leasing of said lands, or any part or portion thereof, shall be applied to the proper use and benefit thereof and shall vest in the state of Montana for the use and benefit thereof."

Section 9. Section 20-8-111, MCA, is amended to read:

"**20-8-111. Duty of board of public education as to property of school.** The board of public education shall, *either directly or through a contract with a nonprofit corporation,* receive, hold, manage, use, and dispose of real and personal property made over to such board or to the state of Montana by purchase, gift, devise, bequest, or otherwise acquired and the proceeds, interest, and income thereof for the use and benefit of

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said school. *All donations, gifts, devises, or grants made before, on, or after October 1, 1983, to the school shall vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students.*"

Section 10. Section 20-8-112, MCA, is amended to read:

"**20-8-112. Expenditure of school moneys.** No moneys belonging to the deaf and blind school fund shall be expended for any purpose other than for the Montana school for the deaf and blind, and any moneys belonging to any fund or funds which may be hereafter created for such school shall be expended for the express purpose designated in the act or acts creating such fund or funds and for no other purpose."

Section 11. Section 20-8-113, MCA, is amended to read:

"**20-8-113. Duties of superintendent of school for the deaf and blind.** The superintendent of the Montana school for the deaf and blind *shall:*

(1) administer the programs and functions of the school within the guidelines of statutes and under policies prescribed by the board of public education;

(2) prepare and submit reports, summaries, and other information requested by the board;

(3) establish and pursue professional and technical contacts that will contribute information and guidance toward effective and efficient operation of the school;

(4) maintain effective liaison between the school, the superintendent of public instruction, local school districts, and other public and private agencies that have an interest in or influence upon the school;

(5) pursue a program of information for parents, professionals, and the general public."

Section 12. Section 20-8-116, MCA, is amended to read:

"**20-8-116. Employment placement — continuing education.** *(1) The superintendent shall* gather and record data and statistics to help him locate suitable employment for *blind,* deaf, and hard-of-hearing persons not in attendance at said school or for those who have been trained by the department of social and rehabilitation services when it so requests such assistance. He shall consult with various county, state, and federal agencies and with the department of social and rehabilitation services to secure employment for self-sustaining persons. He shall coordinate his work with such federal agencies as social, security and reemployment for those out of work, as required *by* this *part.*

(2) The superintendent may, within funding limitations, develop and offer continuing education programs of a vocational nature for the visually impaired and hearing impaired that use the campus and facilities of the school during the summer months and other times when the school's facilities are not being used by its students."

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Section 13. **Communications skills required of certain employees.** (1) Each permanent employee of the school who works with deaf children or works for or with a fellow employee who is deaf must acquire acceptable total communications skills as prescribed by the board of public education by the end of his first year of employment.

(2) Upon request to the board of public education by the superintendent, an exception to this requirement may be made for an employee not working directly with deaf children.

Section 14. **Repealer.** Sections 20-8-114, 20-8-115, and 20-8-117 through 20-8-119, MCA, are repealed.

Section 15. **Codification instruction.** Section 13 is intended to be codified as an integral part of Title 20, chapter 8, part 1.

Approved March 22, 1983.

CHAPTER NO. 152

AN ACT RAISING THE PUBLIC CONTRACT VALUE LIMIT FOR EXEMPTION FROM LICENSE FEES; AND RAISING THE PUBLIC CONTRACT VALUE LIMIT IN DEFINING A PUBLIC CONTRACTOR; AMENDING SECTIONS 15-50-101 AND 15-50-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-50-101, MCA, is amended to read:

"15-50-101. Definitions. (1) The following words, terms, and phrases in this chapter are, for the purposes hereof, defined as follows:

(a) A "public contractor" within the meaning of this chapter shall include any person who submits a proposal to or enters into a contract for performing all public construction work in the state with the federal government, state of Montana, or with any board, commission, or department thereof or with any board of county commissioners or with any city or town council or with any agency of any thereof or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of *$5,000.*

(b) The term "public contractor" includes subcontractors undertaking to perform the work covered by the original contract or any part thereof, the contract cost, value, or price of which exceeds the sum of *$5,000.*

(c) "Gross receipts" means all receipts from sources within the state, whether in the form of money, credits, or other valuable consideration, received from, engaging in, or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense whatsoever. However, gross receipts shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit,

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uncollectable accounts written off from time to time, or payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

(2) The department of revenue is hereby constituted the "registrar" for the purpose of this chapter."

Section 2. Section 15-50-202, MCA, is amended to read:

"15-50-202. Certain small or federal public contracts exempt. Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than *$5,000*, nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States, neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved."

Approved March 22, 1983.

CHAPTER NO. 153

AN ACT TO PROVIDE THAT INCOME OF A JUDGMENT DEBTOR NECESSARY FOR THE SUPPORT OF HIS FAMILY IS EXEMPT FROM EXECUTION TO SATISFY JUDGMENTS OR ORDERS FOR MAINTENANCE OR CHILD SUPPORT ONLY TO THE EXTENT ALLOWED BY FEDERAL LAW; AMENDING SECTION 25-13-614, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-614, MCA, is amended to read:

"25-13-614. Earnings of judgment debtor. (1) *Except as provided in this section, the* earnings of the judgment debtor for his personal services rendered at any time within 45 days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family supported in whole or in part by his labor, are exempt.

(2) Earnings for personal services are exempt under this section from judgments or orders for maintenance or child support only to the extent allowed by 15 U.S.C. 1673.

(3) Whenever debts are incurred by any such person or his wife or family for gasoline and for the common necessaries of life, then the one-half of such earnings are nevertheless subject to execution, garnishment, and attachment to satisfy debts so incurred.

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(4) The words "his family", as used in this section, *except to the extent that these words include a person covered by a judgment or order under subsection (2)*, are to be construed to include:

(a) the judgment debtor's spouse;

(b) every person who resides with the judgment debtor under his care or maintenance and who is:

(i) a minor child of the judgment debtor or of his spouse or former spouse;

(ii) a minor grandchild, brother, or sister or minor child of a brother or sister of the judgment debtor or of his spouse;

(iii) a father, mother, grandfather, or grandmother of the judgment debtor or of his spouse or former spouse;

(iv) an unmarried sister, brother, or any other relative of the judgment debtor mentioned in this section who has attained the age of majority and is unable to care for or support himself."

Approved March 22, 1983.

CHAPTER NO. 154

AN ACT TO GENERALLY REVISE THE REQUIREMENTS FOR PREMARITAL SEROLOGICAL TESTS; AMENDING SECTIONS 40-1-203, 40-1-204, 40-1-206, AND 40-1-208, MCA; AND REPEALING SECTION 50-19-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-203, MCA, is amended to read:

"40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. *Each female applicant, unless exempted on medical grounds by rule of the department of health and environmental sciences,* shall file with *the license issuer* a medical certificate from a physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make a medical certificate. The certificate shall state that the applicant has been given a standard serological test, performed not more than *6 months* before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant *tested* and that *the other* party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required

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by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test."

Section 2. Section 40-1-204, MCA, is amended to read:

"40-1-204. Contents and form of medical certificate. (1) The medical certificate shall contain a statement from the person in charge of the laboratory making the test or authorized to make such reports, setting forth:

(a) the name of the test;

(b) the date it was made;

(c) the name and address of the physician or other person authorized under the laws of Montana to make the test;

(d) to whom the test was sent; and

(e) the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) *(a)* The certificate and statement shall be on a form to be provided and distributed by the department of health and environmental sciences to all county clerks of the court in the state and to laboratories in this state *that are:*

(i) operated by the armed forces or the public health service of the United States; or

(ii) approved by the department.

(b) This form is hereinafter referred to in 40-1-205 through 40-1-209 as "the certificate form"."

Section 3. Section 40-1-206, MCA, is amended to read:

"40-1-206. Premarital test — approved laboratories — rules. *(1)* For the purpose of 40-1-203 through 40-1-209, a standard serological test shall be a test for rubella immunity *which is* approved by the department of health and environmental sciences.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department;

(b) a laboratory approved by *the* department;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or *the* United States armed forces.

(3) The standard serological test may be made on request at the laboratory of the department of health and environmental sciences.

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(4) The department of health and environmental sciences shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; *and*

(b) exemptions, on medical grounds, from the premarital serological test."

Section 4. Section 40-1-208, MCA, is amended to read:

"**40-1-208. Penalties.** (1) An applicant for a marriage license, a physician or other person authorized by the laws of Montana to make a medical certificate or any person in charge of or authorized to make reports or statements for a laboratory who misrepresents his identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, any licensing officer who issues a marriage license without having received the certificate form, *if required*, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges such information or opens to inspection such certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100."

Section 5. **Repealer.** Section 50-19-106, MCA, is repealed.

Approved March 22, 1983.

CHAPTER NO. 155

AN ACT DEFINING "HASHISH" FOR PURPOSES OF THE CONTROLLED SUBSTANCES LAWS; AMENDING SECTION 50-32-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-32-101, MCA, is amended to read:

"**50-32-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

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(a) a practitioner (or by his authorized agent); or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug which or the container or labeling of which without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V hereinafter set forth.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) (a) "Drug" means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(iii) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(iv) a substance intended for use as a component of any article specified in (a)(i), (a)(ii), or (a)(iii) of this subsection.

(b) "Drug" does not include a device or its components, parts, or accessories.

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(14) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) "Immediate precursor" means a substance which the board of pharmacists finds and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container.

(b) "Manufacture" does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice; or

(ii) by a practitioner or his authorized agent under his supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in *(18)*(a) of this section, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(19) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into

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a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum l., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(24) The term "prescription" is given the meaning it has in 37-7-101.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household."

Approved March 22, 1983.

CHAPTER NO. 156

AN ACT PROVIDING FOR AN INCREASE IN COURT REPORTERS' SALARIES; REQUIRING THAT OFFICIAL NOTES OF PROCEEDINGS BE STORED FOR 10 YEARS IN THE COUNTY WHERE THE PROCEEDINGS WERE HELD; AND PROVIDING FOR CHANGES IN COURT REPORTERS' DUTIES CONCERNING TRANSCRIPTS AND TRANSCRIPT FEES; AMENDING SECTIONS 3-5-602 THROUGH 3-5-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-602, MCA, is amended to read:

"3-5-602. Salary and expenses — apportionment. (1) Each reporter is entitled to receive *a base* annual salary of not less than *$16,000*

or more than *$23,000* and no other compensation except as provided in 3-5-604. The salary shall be set by the judge *for whom* the reporter works. *The salary* is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed. Each county shall pay its portion of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district in the preceding year. The judge of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his district on the basis prescribed in this subsection. *The salary is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511.*

(2) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto. The expenses shall be apportioned and payable in the same way as the salary."

Section 2. Section 3-5-603, MCA, is amended to read:

"**3-5-603. Duties.** Each reporter must, under the direction of the judge, attend all sittings of the court and take full stenographic notes of the testimony and of all proceedings given or had thereat except when the judge dispenses with *the reporter's* services in a particular cause or with respect to a portion of the proceedings therein. The reporter must file with the clerk forthwith the original stenographic notes taken upon a trial or hearing required to be taken by this subsection. *The county in which the proceedings are held shall provide a safe and secure place for the clerk to store all official notes of the proceedings. The official notes must be kept for a period of 10 years.*"

Section 3. Section 3-5-604, MCA, is amended to read:

"**3-5-604. Transcript of proceedings.** (1) Each reporter must furnish, upon request, with all reasonable diligence, to a party or his attorney in a case in which he has attended the trial or hearing a *transcript* from his stenographic notes of the testimony and proceedings *of* the trial or hearing or a part thereof, upon payment by the person requiring the same *$2.00 per page for the original transcript, 50 cents per page for the first copy, 25 cents per page for each additional copy.*

(2) If the county attorney, attorney general, or judge requires a *transcript* in a criminal case, the reporter is entitled to his fees therefor, but he must furnish it. Upon furnishing it, he shall receive a certificate of the sum to which he is so entitled, which is a county charge and must be paid by the county treasurer upon the certificate like other county charges.

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished, *and only the reporter's actual costs of preparation may be paid by the county.*

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(4) If it appears to the judge that a defendant in a criminal case is unable to pay for a *transcript*, it shall be furnished to him and paid for by the county."

Approved March 22, 1983.

CHAPTER NO. 157

AN ACT TO GENERALLY REVISE AERONAUTICS LICENSING REQUIREMENTS; AMENDING SECTIONS 15-24-304, 67-3-201, 67-3-202, AND 67-3-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-3-201, MCA, is amended to read:

"67-3-201. Aircraft registration and licensing. (1) Except as provided in 67-3-102 *and in subsection (7) of this section*, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective *registration*, license, certificate, or permit issued *or approved* by the United States government which has been registered with the department and the registration with the department is in force.

(2) Aircraft customarily kept in this state shall be registered with the department, which may charge a fee therefor of not more than $10. The registration shall be renewed annually on or before *March* 1 each year.

(3) Section 67-3-202 and subsections (2) through *(7)* of this section shall not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft shall be registered as property within a particular county of the state. This county shall be the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county.

(5) Except as provided in 15-6-210, all aircraft shall be subject to all state, county, and school district tax levies and all other levies designated

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for aircraft- or airport-related uses. Such aircraft shall not be liable for other city tax levies.

(6) Aircraft not registered in the state but entering the state to engage in commercial operations shall be registered prior to commencing operation.

(7) Owners of ultralight aircraft for which no appropriate effective license, certificate, or permit is issued by the United States government shall file with the department an appropriate registration recognized and approved by the United States government."

Section 2. Section 67-3-202, MCA, is amended to read:

"**67-3-202. Penalty for registration violations.** (1) When an aircraft required to be registered under the provisions of subsections (2) through *(7)* of 67-3-201 is not registered on or before *March* 1 of the current calendar year, a penalty fee of $100 shall be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) Except for aircraft exempt from property taxation as provided in 15-6-210, an application for registration shall be accompanied by a copy of the receipt for or statement of personal property tax paid, signed by the treasurer of the county where the aircraft is registered or a statement of lien assignment against real property signed by the county assessor where the aircraft is registered. A person who pays personal property tax on his aircraft to any jurisdiction other than the county where the aircraft is required to be registered is liable for the tax in that county without credit for such other taxes paid. In addition to this civil liability, a person who attempts to establish the situs of his aircraft in any jurisdiction other than the county where the aircraft is required to be registered with intent to avoid payment of taxes to that county commits the offense of false swearing as defined in 45-7-202.

(3) A person who operates an aircraft required to be registered in the state without having displayed upon such aircraft a certificate of registration issued by the department for that aircraft commits a misdemeanor."

Section 3. Section 67-3-211, MCA, is amended to read:

"**67-3-211. Airman licensing.** Except as provided in 67-3-102, a person may not engage in aeronautics as an airman in this state unless he has from the department an effective certificate of registration of an appropriate effective airman's license, certificate, or permit issued *or approved* by the United States government authorizing him to engage in the particular class of aeronautics in which he is engaged."

Section 4. Section 15-24-304, MCA, is amended to read:

"**15-24-304. Prorated taxes — aircraft.** A person who acquires an aircraft required to be registered under subsections (2) through *(7)* of 67-3-201 after *March* 1 in any year shall register the aircraft within 30

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days of acquiring it. The county assessor shall prorate the personal property tax due on the aircraft for the remaining portion of the year in the manner provided in 15-24-303."

Approved March 22, 1983.

CHAPTER NO. 158

AN ACT PROVIDING THAT A PARTY MAY MOVE FOR A CONTINUANCE OF THE HEARING ON A YOUTH COURT PETITION WHEN THE YOUTH INVOLVED IS IN CUSTODY AS WELL AS WHEN THE YOUTH IS NOT IN CUSTODY; AMENDING SECTION 41-5-516, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-516, MCA, is amended to read:

"41-5-516. Time limitations on petition hearing — continuance. (1) Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within 15 days after all service is completed. However, either party may move for a continuance under subsection (2) of this section.

(2) The youth court may, upon motion of either party or upon the court's own motion, order a continuance if the interests of justice so require. All motions for a continuance are addressed to the discretion of the youth court judge and must be considered in the light of the diligence shown on the part of the movant.

(3) Delays resulting from service of process or delays resulting from legal actions taken in behalf of the youth shall not be included in the 15-day time limitation."

Approved March 22, 1983.

CHAPTER NO. 159

AN ACT TO REVISE THE LAWS RELATING TO RECALL PETITIONS; AMENDING SECTIONS 2-16-613, 2-16-620, AND 2-16-621, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-613, MCA, is amended to read:

"2-16-613. Limitations on recall petitions. (1) A recall petition may not name more than one officer to be recalled.

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(2) No recall petition against an officer *may be approved for circulation, as required in 2-16-617(3),* until he has held office for 2 months.

(3) No recall petition may be filed against an officer for whom a recall election has been held for a period of 2 years during his term of office unless the state or political subdivision or subdivisions financing such recall election is first reimbursed for all expenses of the preceding recall election."

Section 2. Section 2-16-620, MCA, is amended to read:

"2-16-620. County clerk to verify signatures. (1) The county clerk in each county in which such a petition is signed shall *verify and* compare the signatures of *each person who has signed the petition to assure that he is an elector* in such county and, if satisfied the signatures are genuine, certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

To the Honorable ....., Secretary of State of the State of Montana (or name and title of other officer):

I, ..., ... (title) of ..... County certify that I have compared the signatures on ..... sheets (specifying number of sheets) of the petition for recall No. ..... attached, *in the manner prescribed by law,* and I believe ..... (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: ..... (Date) ..... (Signature)

Seal ..... (Title)

(2) *Such* certificate *is* prima facie evidence of the facts stated therein, and the secretary of state or other officer receiving the recall petition *may* consider and count only such signatures as are certified. *However,* the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters which prove to be genuine, and such signatures shall be considered and counted if they are attested to in the manner and form as provided for initiative and referendum petitions.

(3) The county clerk may not retain any *portion of a* petition for more than *30* days *following the receipt of that portion.* At the expiration of such period the county clerk shall *certify the valid signatures on that portion of the petition and* deliver the same to the person with whom the petition is required to be filed."

Section 3. Section 2-16-621, MCA, is amended to read:

"2-16-621. Notification to officer — statement of justification. Upon filing the petition *or a portion of the petition containing the number of valid signatures required under 2-16-614,* the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice shall state that a recall petition has been filed, shall set forth the reasons contained therein, and shall notify the officer

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named in the recall petition that he has the right to prepare and have printed on the ballot a statement containing not more than 200 words giving reasons why he should not be recalled. No such statement of justification shall be printed on the ballot unless it is delivered to the filing official within 10 days of the date notice is given."

Approved March 22, 1983.

CHAPTER NO. 160

AN ACT PROVIDING FOR FULL CONTROL AND MANAGEMENT OF MUNICIPAL PUBLIC TRANSPORTATION SERVICES AND TRANSPORTATION DISTRICT SERVICES BY THE MUNICIPALITY OR DISTRICT; AMENDING SECTIONS 7-14-4403 AND 69-12-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-4403, MCA, is amended to read:

"7-14-4403. Operation of municipal busline. The city or town council or commission shall have authority to provide for the management and operation of the system authorized by 7-14-4401(1) and to do all things necessary for the successful operation of said transportation system."

Section 2. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter — exemptions. (1) Except as provided in 69-12-201(1)(f), this chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

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(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances;

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill; *or*

(j) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 4.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Approved March 22, 1983.

CHAPTER NO. 161

AN ACT TO ALLOW THE TRUSTEES OPERATING A POSTSECONDARY VOCATIONAL-TECHNICAL CENTER TO INCLUDE IN THE PROPOSITION FOR AN ADDITIONAL LEVY IN SUPPORT OF THE CENTER FINANCING FOR SALARIES, BENEFITS, OPERATIONS, AND EQUIPMENT; AMENDING SECTION 20-7-326, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-326, MCA, is amended to read:

"20-7-326. Additional levy by school district. *(1)* Notwithstanding the provisions of 20-7-324, the trustees operating a postsecondary vocational-technical center may propose to adopt a budget in excess of the amount appropriated by the legislature for salaries, benefits, *operations, and equipment*. The legislature shall base the appropriation for salaries, benefits, *operations, and equipment* on amounts appropriated in the previous legislative session.

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(2) When the trustees determine that an additional amount *of financing* is required *for salaries, benefits, operations, and equipment*, they must submit the proposition for an additional levy to the qualified electors of the district pursuant to 20-20-301 and in the manner prescribed by 20-9-353. When another additional levy proposition is presented to the electorate, the proposition for an additional levy for a postsecondary vocational-technical center may be presented as a separate issue on the ballot or it may be consolidated with the additional levy proposition of the high school district."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1983.

CHAPTER NO. 162

AN ACT TO DELETE THE REQUIREMENT THAT ADDITIONAL STRIP- AND UNDERGROUND-MINING PERMITS MAY NOT BE ISSUED TO AN OPERATOR WHO HAS REPEATEDLY VIOLATED STATE RECLAMATION LAWS; AMENDING SECTION 82-4-251, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-251, MCA, is amended to read:

"82-4-251. Noncompliance — suspension of permits. (1) The commissioner or an authorized representative of the department shall, if he determines on the basis of an inspection that any condition or practices exist or that the permittee is in violation of any requirement of this part or any permit condition required by the part that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources, immediately order cessation of the operation or the portion thereof relevant to the condition, practice, or violation. The cessation order remains in effect until the commissioner or his authorized representative determines that the condition, practice, or violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). If the commissioner or his authorized representative finds that the ordered cessation of the operation, or any portion thereof, will not completely abate the imminent danger to the health or safety of the public or the significant and imminent environmental harm to land, air, or water resources, he shall in addition to the cessation order impose affirmative obligations requiring whatever steps the commissioner or his authorized representative considers necessary to abate the imminent danger or the significant environmental harm.

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(2) When, on the basis of an inspection, the department determines that any permittee is in violation of any requirement of this part or any permit condition required by this part which does not create an imminent danger to the health or safety of the public or cannot be reasonably expected to cause significant and imminent environmental harm to land, air, or water resources, the commissioner or authorized representative shall issue a notice to the permittee or his agent fixing a reasonable time, not exceeding 90 days, for the abatement of the violation and providing opportunity for public hearing. If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commissioner or his authorized representative, the commissioner or his authorized representative finds that the violation has not been abated, he shall immediately order a cessation of the operation or the portion thereof relevant to the violation. Such cessation order remains in effect until the commissioner or his authorized representative determines that the violation has been abated or until modified, vacated, or terminated by the commissioner or his authorized representative pursuant to subsection (5). In the order of cessation issued under this subsection, the commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the commissioner or his authorized representative determines that a pattern of violations of any requirements of this part or any permit conditions required by this part exists or has existed and if the commissioner or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any requirements of this part or any permit conditions or that such violations are willfully caused by the permittee, the commissioner or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested, the commissioner shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the commissioner or his authorized representative shall forthwith suspend or the board shall revoke the permit. When a permit has been revoked, the board may order the performance bond forfeited.

(4) Any additional permits held by an operator whose mining permit has been revoked shall be suspended and the operator is not eligible to receive another permit or to have the suspended permits reinstated until he has complied with all the requirements of this part in respect to former permits issued him. An operator who has forfeited a bond is not eligible to receive another permit unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid into the reclamation account a sum together with the value of the bond the board finds adequate to reclaim the lands.

(5) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial

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action required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the permittee or his agent by the department or the commissioner or his authorized representative who issues the notice or order. All such notices and orders must be in writing and be signed by the authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the commissioner or his authorized representative, provided that any notice or order issued pursuant to this section that requires cessation of mining by the operator expires within 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

(6) A person issued a notice or an order of cessation pursuant to this section or any person having an interest that is or may be adversely affected by an order or by modification, vacation, or termination of an order may apply to the department for review of that order within 30 days of its issuance or within 30 days of its modification, vacation, or termination. Upon receipt of the application, the department shall make an investigation. The investigation shall provide an opportunity for public hearing at the request of the applicant or the person having an interest who is or may be adversely affected to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of it. The filing of an application for review under this subsection may not operate as a stay of any order or notice. The department shall make findings of fact and issue a written decision incorporating an order vacating, affirming, modifying, or terminating the order.

(7) Whenever an order is issued under this section or as the result of any administrative proceeding under this part, at the request of any person, a sum equal to the aggregate amount of all costs, expenses, and attorney fees as determined by the department to have been reasonably incurred by such person for or in connection with his participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the department, resulting from administrative proceedings, considers proper.

(8) In order to protect the stability of the land, the commissioner or his authorized representative shall order cessation of underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns, and communities."

Approved March 22, 1983.

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CHAPTER NO. 163

AN ACT TO REDUCE THE NUMBER OF COPIES OF THE ADMINISTRATIVE RULES OF MONTANA TO BE PROVIDED TO COUNTIES; GIVING THE GOVERNING BODY OF THE COUNTY DISCRETION ON DISTRIBUTION; AND REDUCING THE NUMBER OF COPIES PROVIDED TO THE LEGISLATIVE COUNCIL; AMENDING SECTION 2-4-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-313, MCA, is amended to read:

"2-4-313. Distribution, costs, and maintenance. (1) The secretary of state shall distribute copies of ARM and supplements or revisions thereto, with costs paid as provided in 2-4-312(2), to the following:

(a) attorney general, one copy;

(b) clerk of each court of record of this state, one copy;

(c) clerk of United States district court for the district of Montana, one copy;

(d) clerk of United States court of appeals for the ninth circuit, one copy;

(e) *county commissioners or governing body of* each county of this state, for use of county officials and the public, *at least* one *but not more than two copies*, which may be maintained in a public library in the county seat or in the county offices *as the county commissioners or governing body of the county may determine*;

(f) state law library, one copy;

(g) state historical society, one copy;

(h) each unit of the Montana university system, one copy;

(i) law library of the university of Montana, one copy;

(j) legislative council, *two* copies;

(k) library of congress, one copy;

(l) state library, one copy.

(2) The secretary of state, clerk of each court of record in the state, each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of ARM, including supplements or revisions thereto. Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions thereto and the register available to any person at prices fixed in accordance with subsection (4).

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(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions thereto and the register. The cost shall be the approximate cost of publication, including indexing, printing or duplicating, and mailing, less fees charged agencies pursuant to subsection (6) and money appropriated for 2-4-312(2) and 2-4-313(1). However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register.

(5) The secretary of state shall deposit all fees he collects in an account within the revolving fund created for paying the expenses of publication of ARM and the register.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. He shall fix, in consultation with the administrative code committee, the fee to cover a portion of the costs of publication and mailing."

Approved March 22, 1983.

CHAPTER NO. 164

AN ACT TO PROVIDE FOR DIRECT REPEAL OF ADMINISTRATIVE RULES BY BILL; TO PROVIDE FOR LEGISLATIVE DIRECTION BY BILL OR LEGISLATIVE REQUEST OR ADVICE BY JOINT RESOLUTION OF AGENCY ADOPTION, AMENDMENT, OR REPEAL OF ADMINISTRATIVE RULES AND TO REQUIRE COMPLIANCE WITH THAT DIRECTION WHEN ADOPTED IN BILL FORM; AMENDING SECTION 2-4-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, section 2-4-412, MCA, provides for the direct repeal of administrative rules by joint resolution of the Legislature and requires changes to be made in rules or new rules to be adopted in accordance with joint resolutions of the Legislature; and

WHEREAS, on March 18, 1982, District Judge Gordon Bennett ruled in the case of The Montana Taxpayers' Association v. The Department of Revenue, Lewis and Clark County Civil No. 47126, that the Legislature's authority to mandate a change in administrative rules by joint resolution is unconstitutional, as a violation of the doctrine of separation of powers; and

WHEREAS, the Legislature considers it desirable to advise agencies by joint resolution that rules be adopted, amended, or repealed and expects its directions to agencies to have the force of law when adopted in the form of a bill.

THEREFORE, it is the intent of the Legislature to provide for the direct repeal of administrative rules by bill; to provide for legislative

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requests or advice for the adoption, amendment, or repeal of administrative rules by joint resolution; to provide for legislative direction for the adoption, amendment, or repeal of administrative rules by bill; and to require agency compliance with that direction when adopted in bill form.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-412, MCA, is amended to read:

"2-4-412. Legislative review of rules — effect of failure to object. (1) The legislature may, by *bill*, repeal any rule in ARM. If a rule is repealed, the legislature shall in the *bill* state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the *bill*. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also by joint resolution *request or advise or by bill* direct *the adoption, amendment, or repeal of* any rule. If a change in any rule or the adoption of an additional rule is *advised, requested, or* directed to be made, the legislature shall in the joint resolution *or bill* state the nature of the change or the additional rule to be made and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction *in a bill*.

(3) Rules and changes in rules *made by agencies* under subsection (2) of this section shall conform and be pursuant to statutory authority.

(4) Failure of the legislature or the administrative code committee to object in any manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the validity of any rule."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1983.

CHAPTER NO. 165

AN ACT TO AUTHORIZE THE BOARD OF LAND COMMISSIONERS TO SET THE PRIMARY TERM OF OIL AND GAS LEASES AT 10 YEARS OR LESS; AMENDING SECTION 77-3-421, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-3-421, MCA, is amended to read:

"77-3-421. Duration of lease. (1) All state oil and gas leases *entered by the board* shall be granted for a primary term of *not more than* 10 years *or less than 5 years* and as long thereafter as oil or gas in paying

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quantities is produced, on condition that all drilling, rental, and other obligations are fully kept and performed by the lessee. *However, leases for a period of less than 5 years may be issued if the board determines that such shorter term is necessary to ensure full compensation for the oil and gas resource.*

(2) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement are considered to be produced from the state lands therein within the meaning of this part."

Approved March 22, 1983.

CHAPTER NO. 166

AN ACT AUTHORIZING WHOLESALE DISTRIBUTORS OF GASOLINE IN LARGE VOLUMES THE OPTION OF PURCHASING GASOLINE ON A TEMPERATURE CORRECTED BASIS; AMENDING SECTION 30-12-409, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-12-409, MCA, is amended to read:

"30-12-409. Sale of gasoline and distillates on other than gross volume basis unlawful — exception. *(1) Except as provided in subsection (2) or in Title 82, chapter 15, part 1, the* sale, *barter, or exchange* of gasoline and distillates on a temperature corrected basis or on any basis other than the gross volume of gasoline or distillate actually delivered is void. Any contract in violation of this section shall be unenforceable to the extent of the violation.

(2) Suppliers of gasoline and distillates shall offer Montana petroleum wholesale distributors the option to buy gasoline and distillates either by gross volume actually delivered or on the assumption that the temperature of the product is 60 degrees Fahrenheit or the centigrade equivalent. This purchaser option may be exercised only on an annual basis and may be applied only to single deliveries of 7,500 gallons or more or the metric equivalent. Any adjustments to volume during the temperature compensation process must be made in accordance with standards set under 82-15-103, 82-15-108, and 82-15-109. Purchasers who choose to exercise the option available under this subsection must be provided with invoice listings of both net and gross gallons.

(3) This section does not apply to the exchange or transfer of gasoline and distillates between refiners or transporters of petroleum or petroleum products."

Section 2. **Effective date.** This act is effective May 1, 1983.

Approved March 22, 1983.

CHAPTER NO. 167

AN ACT TO AMEND THE MONTANA MAJOR FACILITY SITING ACT TO DELETE THE PROVISION EXEMPTING FEDERAL FACILITIES FROM ITS COVERAGE; AMENDING SECTIONS 75-20-201 AND 75-20-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-201, MCA, is amended to read:

"75-20-201. Certificate required — operation in conformance — approval by popular vote of certificate for nuclear facility. (1) A person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility and public need issued with respect to the facility by the board.

(2) A facility with respect to which a certificate is issued may not thereafter be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained therein.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the board decides to issue a certificate for a nuclear facility, it shall report such recommendation to the applicant and may not issue the certificate until such recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

(5) This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction."

Section 2. Section 75-20-202, MCA, is amended to read:

"75-20-202. Exemptions. *(1)* A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.

(2) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that:

(a) would otherwise be covered by this chapter; and

(b) (i) is unlikely to have a significant environmental impact by reason of length, size, location, available space or right-of-way, or construction methods; or

(ii) utilizes coal, wood, biomass, grain, wind, or sun as a fuel source and the technology of which will result in greater efficiency, promote energy conservation, and promote greater system reliability than the existing facility."

Approved March 22, 1983.

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CHAPTER NO. 168

AN ACT TO EXEMPT HEALTH CARE FACILITIES FROM ANY BUILDING CODE REQUIREMENT THAT SELF-CLOSING OR AUTOMATIC CLOSING CORRIDOR DOORS TO PATIENT ROOMS MUST BE INSTALLED OR MAINTAINED; AMENDING SECTION 50-60-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-205, MCA, is amended to read:

"50-60-205. When state building code applies — health care facilities. *(1)* If a municipality or county does not adopt a building code as provided in 50-60-301, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101."

Approved March 22, 1983.

CHAPTER NO. 169

AN ACT LOWERING THE EXCEPTION AGE FOR PURCHASE OF DEER AND ELK TAGS AT HALF PRICE; ESTABLISHING HALF-PRICE LICENSE FEES FOR DISABLED PERSONS; ELIMINATING THE REQUIREMENT FOR DISABLED PERSONS TO HAVE A DISABILITY CERTIFICATE FROM A MEDICAL DOCTOR TO QUALIFY FOR LICENSE EXCEPTION; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO DETERMINE DISABILITY REQUIREMENTS BY RULE; ESTABLISHING HALF-PRICE LICENSE FEES FOR YOUTHS 12 YEARS THROUGH 14 YEARS OF AGE; AND LOWERING THE AGE AT WHICH A YOUTH MUST PURCHASE A LICENSE; AMENDING SECTIONS 87-2-801, 87-2-803, AND 87-2-805, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-801, MCA, is amended to read:

"87-2-801. Residents over sixty-two years of age. (1) A resident, under the definition of 87-2-102, who is 62 years of age or older *is* entitled to fish and hunt game birds with a conservation license issued by the department. The form of such license shall be prescribed by the department.

(2) A resident who is *62* years of age or older is also entitled to purchase regular resident deer and elk tags at a price that is one-half of the

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fee paid by a resident who is 15 years old or older and who is under 62 years of age."

Section 2. Section 87-2-803, MCA, is amended to read:

"87-2-803. Disabled persons. (1) Disabled persons are entitled to fish *and to hunt game birds with only* a *conservation* license if they are residents of Montana not residing in an institution and are certified as disabled *as prescribed by departmental rule.*

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years old or older and who is under 62 years of age.

(3) Such disabled persons shall carry a permit on a form prescribed by the department."

Section 3. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under fifteen years of age. (1) Minors *from 12 years through 14* years of age may fish *and may hunt upland and migratory birds* during the open season *with only* a *conservation* license. *Resident minors under 12 years of age may fish without a license.* However, no nonresident person under the age of 15 years may fish in or on any Montana waters without first having obtained a Class B, B-3, or B-4 fishing license unless the nonresident person under the age of 15 years is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) Residents, as defined by 87-2-102, under the age of 15 years may purchase Class A-1, A-3, and A-5 licenses at *a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.*"

Section 4. **Effective date.** This act is effective March 1, 1984.

Approved March 22, 1983.

CHAPTER NO. 170

AN ACT PROVIDING A PROPERTY TAX EXEMPTION TO CERTAIN ASSOCIATIONS AND CORPORATIONS FURNISHING POTABLE WATER TO MEMBERS OR CUSTOMERS; AMENDING SECTION 15-6-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

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(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts;

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less; *and*

(l) fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land.

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(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Approved March 22, 1983.

CHAPTER NO. 171

AN ACT TO ESTABLISH A RANGELAND IMPROVEMENT LOAN PROGRAM; AMENDING SECTIONS 76-14-103 AND 90-2-113, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-14-103, MCA, is amended to read:

"76-14-103. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Person" means any individual or association, partnership, corporation, or other business entity.

(6) "Range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

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(7) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(8) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(9) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(10) "Tame pasture" means land that has been modified by mechanical cultivation and whose current vegetation consists of native or introduced species, or both.

(11) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands."

Section 2. **Rangeland improvement loan program.** The department may make rangeland improvement loans for rangeland development and improvement, including but not limited to stockwater development, cross fencing, establishment of grazing systems, reseeding, mechanical renovation, sagebrush management, and weed control.

Section 3. **Rangeland improvement loan earmarked account.** (1) There is created a rangeland improvement loan earmarked account within the earmarked revenue fund established in 17-2-102.

(2) There must be allocated to the rangeland improvement loan earmarked account 15% of the total amount of renewable resource development grants and loans as provided by 90-2-113, any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program, and any fees or charges collected by the department pursuant to [section 7] for the servicing of loans, including arrangements for obtaining security interests.

Section 4. **Eligibility for loans.** (1) Any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who:

(a) is a resident of Montana;

(b) is engaged in farming or ranching; and

(c) possesses the necessary expertise to make a rangeland loan practical.

(2) All loans must be for rangeland improvement or development exclusively.

(3) An application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States soil conservation service.

Section 5. **Criteria for evaluation of loan applications.** The following criteria must be considered in selecting loan recipients:

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(1) Loan applications must be ranked according to the following priorities:

(a) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition and of benefit to more than a single operator, have first priority.

(b) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition but of benefit to only a single operator, have second priority.

(c) Range improvement or development projects undertaken on either native rangeland or tame pastureland used in conjunction with native rangeland, or both, resulting in the improvement of native range condition and the condition of the tame pastureland used in conjunction with native rangeland, have third priority.

(d) Range improvement or development projects undertaken on tame pastureland, resulting in the improvement of the tame pastureland exclusively, have fourth priority.

(e) Range improvement or development projects undertaken to return to rangeland status land that was once native rangeland and that has since been cultivated have fifth priority.

(2) Consideration must be given to the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and soil conservation.

(3) Consideration must be given to the amount of funding from other sources.

(4) Consideration must be given to the feasibility and practicality of the project.

Section 6. **Selection of loan recipients.** (1) Conservation district supervisors shall initially review loan applications for feasibility and prioritize applications for referral to the department.

(2) The department shall organize and review applications for clarity and completeness prior to committee review.

(3) The committee shall consider applications and make recommendations to the department.

(4) The department shall finally approve or disapprove applications recommended by the committee and shall select loan recipients.

Section 7. **Rules.** The department shall adopt rules:

(1) prescribing the form and content of applications for loans and the required conservation plan;

(2) governing the application of the criteria for awarding loans and the procedure for the review of applications by conservation district supervisors, the committee, and the department;

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(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted; and

(5) prescribing the conditions for making loans.

Section 8. Section 90-2-113, MCA, is amended to read:

"90-2-113. Allocation of grants and loans. (1) Subject to the requirements of 90-2-103, loans or grants may be proposed under this part for any worthwhile project for the conservation, management, utilization, development, or preservation of the land, water, timber, fish, wildlife, or other renewable resources of the state. Of the total amount of grants and loans proposed for each biennium, at least:

(a) 15% shall be designated for timber stand improvement or related purposes;

(b) 40% shall be designated for water development projects;

(c) 15% shall be designated for improvements on agricultural lands;

(d) 10% shall be designated for conservation districts for development of their water reservations; and

(e) 20% shall be designated for such other projects as the department considers appropriate, *except that for the period from July 1, 1983, through June 30, 1989, three-fourths of this amount shall be designated for loans to be made by the department under the Montana Rangeland Resources Act.*

(2) If qualified applications are not received by the department to meet the allocations set forth in subsection (1), the remaining allocation shall be designated for qualified projects in (a), (b), (c), (d), or (e) of subsection (1)."

Section 9. **Codification instruction.** Sections 2 through 7 are intended to be codified as an integral part of Title 76, chapter 14, part 1, and the provisions of Title 76, chapter 14, part 1, apply to sections 2 through 7.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1983.

CHAPTER NO. 172

AN ACT TO GENERALLY REVISE THE COMPOSITION OF THE STATE LIBRARY COMMISSION; AMENDING SECTION 22-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-101, MCA, is amended to read:

"22-1-101. State library commission established. *(1) There is a* state library commission.

(2) This commission *is composed of the following members:*

(a) the state superintendent of public instruction *or his designee;*

(b) five persons appointed by the governor, who shall serve *staggered terms of 3 years; and*

(c) a librarian appointed by the commissioner of higher education from one of the six units of the Montana university system, who shall serve a term of 3 years.

(3) The commission shall annually elect a chairman from its membership.

(4) The members of said commission shall receive no compensation for their services except their travel expenses, as provided for in 2-18-501 through 2-18-503."

Section 2. **Transition schedule.** To reflect the increase in membership provided for in 22-1-101(2)(b), the governor must appoint three members to the board prior to the 1983 annual meeting. Of the three members appointed in 1983, the term of office of the first appointed member is 3 years, that of the second appointed member is 2 years, and that of the third appointed member is 1 year. Beginning with the appointment made in 1984, the term of each member appointed by the governor is 3 years. The commissioner of higher education must appoint a member as provided in 22-1-101(2)(c) prior to the 1983 annual meeting.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1983.

CHAPTER NO. 173

AN ACT ALLOWING A CONSERVATION DISTRICT TO BE REORGANIZED INTO SEVEN SUPERVISOR AREAS; AND ALLOWING FOR THE ELECTION OF SEVEN CONSERVATION DISTRICT SUPERVISORS; AMENDING SECTION 76-15-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Seven supervisor districts.** In a district containing no incorporated municipalities, the board may reorganize the district into seven supervisor areas.

Section 2. **Transition to seven supervisors.** (1) At the time of reorganization under [section 1], the board shall appoint:

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(a) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the next general election; and

(b) one supervisor for a term to coincide with the terms of those elected supervisors whose terms will expire after the general election following the next general election.

(2) The supervisor positions held by the appointed supervisors become open for election at the time the terms expire. Thereafter, a district having seven supervisors shall alternately elect four and three supervisors at succeeding general elections.

(3) Nominations for the election of supervisors in a district having seven supervisors must be made as provided in 76-15-302.

(4) The term of each elected supervisor is 4 years.

(5) The election administrator in each county having a seven-supervisor district shall conduct the election for that district in a manner similar to elections conducted for a district having five supervisors.

Section 3. Section 76-15-311, MCA, is amended to read:

"76-15-311. Governing body of district. (1) If there are no incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of five elected supervisors *unless the district has been reorganized pursuant to [section 1] and [section 2].*

(2) If there are incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years.

(b) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein."

Section 4. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 76, chapter 15, part 3, and the provisions of Title 76, chapter 15, part 3, apply to sections 1 and 2.

Approved March 22, 1983.

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CHAPTER NO. 174

AN ACT TO AMEND AND GENERALLY REVISE THE LAWS RELATING TO THE REQUIREMENTS FOR EXECUTING CERTAIN DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING PENALTIES FOR MAKING FALSE STATEMENTS; AMENDING SECTIONS 30-13-203, 30-13-207, 30-13-212, 30-13-311, 30-13-313, 30-13-318, 35-1-201, 35-1-209, 35-1-212, 35-1-213, 35-1-306, 35-1-412, 35-1-602, 35-1-612, 35-1-804, 35-1-805, 35-1-901 THROUGH 35-1-903, 35-1-907, 35-1-908, 35-1-911, 35-1-1008, 35-1-1013, 35-1-1017, 35-1-1101, 35-2-1201, 35-6-201, 35-15-201, 35-15-204, 35-15-205, 35-15-305, 35-15-504, 35-17-202 THROUGH 35-17-204, 35-17-504, 35-18-203 THROUGH 35-18-206, 35-18-401, 35-18-402, 35-18-404, 35-18-405, AND 35-18-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Execution constituting affirmation — penalty — warning.** (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

Section 2. Section 30-13-203, MCA, is amended to read:

"30-13-203. Application for registration of assumed business name. All persons transacting business in this state under an assumed business name shall execute and file with the secretary of state, on forms furnished by the secretary of state, an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and address, including the street name and number, of applicant;

(2) the complete name of proposed assumed business name;

(3) date of first use, in commerce, of assumed business name;

(4) description of business transacted under such name; and

(5) the name of county or counties in which business is being transacted."

Section 3. Section 30-13-207, MCA, is amended to read:

"30-13-207. Application for renewal of assumed business name. Duplicate originals of application for renewal of registration of an assumed business name shall be executed and delivered to the secretary of state. The application shall include but not be limited to the following information:

(1) the complete assumed business name;

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(2) the name and address, including street name and number, if any, of applicant;

(3) description of business transacted; and

(4) the name of the county or counties in which business is being transacted."

Section 4. Section 30-13-212, MCA, is amended to read:

"30-13-212. Filing application for reservation of assumed business name — issuance of certificate thereon. (1) Duplicate originals of application for reservation of an assumed business name, duly executed by the applicant, shall be delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of the duplicate originals in his office;

(c) issue a certificate of reservation, to which he shall affix the other duplicate original.

(2) The certificate of reservation, together with the duplicate original of application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant."

Section 5. **Execution constituting affirmation — penalty — warning.** (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

Section 6. Section 30-13-311, MCA, is amended to read:

"30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for such registration and, if a corporation, the state of incorporation;

(b) the essential feature of the mark to be registered;

(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business;

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(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form thereof or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed by the applicant or a member of the firm or an officer of the corporation or association applying.

(3) The application must be accompanied by a specimen or facsimile of such mark in duplicate.

(4) The application for registration must be accompanied by a filing fee of $20, payable to the secretary of state."

Section 7. Section 30-13-313, MCA, is amended to read:

"**30-13-313. Duration and renewal.** (1) Registration of a mark under this part is effective for a term of 10 years from the date of registration and, upon application filed within 6 months prior to the expiration of such term, the registration may be renewed for another 10 years.

(2) An application for renewal of mark registration must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and business address of the applicant;

(b) a description of the mark; and

(c) a statement that the mark is still in use by the applicant in this state.

(3) The application for renewal of mark registration must be signed by the applicant.

(4) The application for renewal of mark registration must be accompanied by a filing fee of $20, payable to the secretary of state."

Section 8. Section 30-13-318, MCA, is amended to read:

"**30-13-318. Cancellation.** The secretary of state shall cancel from the register:

(1) after July 1, 1981, each registration made prior to July 1, 1980, that is more than 10 years old and not renewed in accordance with this part;

(2) any registration *for* which *he* receives a *written* request for cancellation, *signed and verified by* the registrant or the assignee of record *and accompanied by fees as prescribed in this part*;

(3) each registration granted under this part and not renewed in accordance with the provisions of this part;

(4) any registration concerning which a court of competent jurisdiction finds that:

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(a) the registered mark has been abandoned;

(b) the registrant is not the owner of the mark;

(c) the registration was granted improperly;

(d) the registration was obtained fraudulently;

(e) the registered mark is so similar to a mark currently registered by another person in the United States patent and trademark office prior to the filing date of the application for registration under this part as to be likely to cause confusion or mistake or to deceive. However, if the registrant proves that he is the owner of a concurrent registration of his mark in the United States patent and trademark office covering an area including this state, the registration under this part may not be canceled.

(5) a registration ordered canceled by a court of competent jurisdiction on any grounds."

Section 9. Section 35-1-201, MCA, is amended to read:

"35-1-201. Incorporators. One or more persons of legal age or a domestic or foreign corporation may act as incorporator or incorporators of a corporation by signing and delivering in duplicate to the secretary of state articles of incorporation for such corporation."

Section 10. Section 35-1-209, MCA, is amended to read:

"35-1-209. Articles of amendment — contents. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) the amendments so adopted;

(3) the date of the adoption of the amendment by the shareholders or the board of directors when no shares have been issued;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or, if no shares have been issued, a statement to that effect;

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected."

Section 11. Section 35-1-212, MCA, is amended to read:

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"35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed in duplicate by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

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(i) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(ii) file one of such duplicate originals in his office;

(iii) issue a certificate of amendment to which he shall affix the other duplicate original.

(c) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(4) The amendment becomes effective upon the issuance of the certificate of amendment by the secretary of state or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as may be provided for in the articles of amendment, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation."

Section 12. Section 35-1-213, MCA, is amended to read:

"35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

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(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected."

Section 13. Section 35-1-306, MCA, is amended to read:

"35-1-306. Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office is changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent is changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed, file such statement in his office. Upon filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, is effective.

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(3) A registered agent of a corporation may resign as registered agent upon filing a written notice of resignation, executed in duplicate, with the secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation."

Section 14. Section 35-1-412, MCA, is amended to read:

"35-1-412. Penalty for signing false document. *(1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.*

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this chapter."

Section 15. Section 35-1-602, MCA, is amended to read:

"35-1-602. Issuance of shares of preferred or special classes in series — filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted;

(f) voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations

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in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof;

(c) the date of adoption of such resolution;

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) return the other duplicate original to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation."

Section 16. Section 35-1-612, MCA, is amended to read:

"35-1-612. Power of corporation to acquire its own shares. (1) A corporation shall have the power to acquire its own shares. All of its own shares acquired by a corporation, upon acquisition, constitute authorized but unissued shares unless the articles of incorporation provide that they may not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.

(2) If the number of authorized shares is reduced by an acquisition, the corporation shall, no later than the time it files its next annual report

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under this chapter with the secretary of state, file a statement of cancellation showing the reduction in the authorized shares. The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

(3) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed in this chapter:

(a) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) return the other duplicate original to the corporation or its representative."

Section 17. Section 35-1-804, MCA, is amended to read:

"35-1-804. Articles of merger, consolidation, or exchange — contents — filing. (1) Upon receiving the approvals required by 35-1-801 and 35-1-803, articles of merger, consolidation, or exchange shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger, consolidation, or exchange;

(b) as to each corporation, either:

(i) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(ii) a statement that the vote of shareholders is not required by virtue of 35-1-803(5); and

(c) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) Duplicate originals of the articles of merger, consolidation, or exchange shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

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(b) file one of such duplicate originals in his office;

(c) issue a certificate of merger, consolidation, or exchange to which he shall affix the other duplicate original.

(3) The certificate of merger, consolidation, or exchange, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving, new, or acquiring corporation, as the case may be, or its representative."

Section 18. Section 35-1-805, MCA, is amended to read:

"35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation;

(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) issue a certificate of merger to which he shall affix the other duplicate original.

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(5) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative."

Section 19. Section 35-1-901, MCA, is amended to read:

"35-1-901. Voluntary dissolution by incorporators or initial board of directors — filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators or initial board of directors and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid;

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of dissolution to which he shall affix the other duplicate original.

(3) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, the board of directors, or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease."

Section 20. Section 35-1-902, MCA, is amended to read:

"35-1-902. Voluntary dissolution by consent of shareholders — statement of intent. (1) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(2) Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

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(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation;

(e) a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized."

Section 21. Section 35-1-903, MCA, is amended to read:

"35-1-903. Voluntary dissolution by act of corporation — statement of intent. A corporation may be dissolved by the act of the corporation when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or special meeting, shall state that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(e) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class;

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(f) the number of shares voted for and against the resolution, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively."

Section 22. Section 35-1-907, MCA, is amended to read:

"35-1-907. Revocation of voluntary dissolution proceedings by consent of shareholders. (1) By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(2) Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings;

(e) that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized."

Section 23. Section 35-1-908, MCA, is amended to read:

"35-1-908. Revocation of voluntary dissolution proceedings by act of corporation. By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(2) Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the

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corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(e) the number of shares outstanding;

(f) the number of shares voted for and against the resolution, respectively."

Section 24. Section 35-1-911, MCA, is amended to read:

"35-1-911. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) that the secretary of state has theretofore filed a statement of intent to dissolve the corporation and the date on which such statement was filed;

(3) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(4) that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests;

(5) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit."

Section 25. Section 35-1-1008, MCA, is amended to read:

"35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one

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of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

(c) the date of incorporation and the period of duration of the corporation;

(d) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(e) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address;

(f) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(g) the names and respective addresses of the directors and officers of the corporation;

(h) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class;

(i) a statement of the aggregate number of issued shares, itemized by classes and series, if any, within a class; and

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary."

Section 26. Section 35-1-1013, MCA, is amended to read:

"35-1-1013. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address, including street and number, if any, of its then registered office;

(c) if the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

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(f) that the address, including street and number, if any, of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed by the corporation by its president or a vice-president and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office and, upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation."

Section 27. Section 35-1-1017, MCA, is amended to read:

"35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

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(f) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class, as of the date of such application;

(g) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class, as of the date of such application;

(h) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to said application to the effect that the department is satisfied from the available evidence that all such taxes imposed have been paid. The issuance of such certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(i) such additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by such foreign corporation as prescribed by this chapter.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee."

Section 28. Section 35-1-1101, MCA, is amended to read:

"35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class; and

(f) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class.

(2) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the

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corporation, wherever located, and the value of the property of the corporation located within this state and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12 months ended on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If on December 31 preceding the time herein provided for the filing of such report, the corporation had not been authorized to transact business in this state for a period of 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in this state and such December 31. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subsection need not be set forth in such report.

(3) Such annual report must be on forms prescribed by the secretary of state. The information therein contained must be given as of the date of the execution of the report. It must be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation by such receiver or trustee."

Section 29. Section 35-2-1201, MCA, is amended to read:

"35-2-1201. Reinstatement of corporation whose term has expired. (1) The secretary of state may:

(a) reinstate any corporation which has expired under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state in duplicate an application, executed by a person who was an officer or director at the time of expiration, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

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(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the expiration."

Section 30. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation. (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state in duplicate an application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-921 or 35-2-711;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement; and

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

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(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 31. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry which they intend to prosecute.

(2) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20."

Section 32. Section 35-15-204, MCA, is amended to read:

"35-15-204. Issuance of certificate of organization — effect. (1) The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be *executed* by at least a majority of the commissioners and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

(2) Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business."

Section 33. Section 35-15-205, MCA, is amended to read:

"35-15-205. Amendment of articles of incorporation. At any time after the filing of the certificate of complete organization, the articles

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of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation for which he shall receive the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located."

Section 34. Section 35-15-305, MCA, is amended to read:

"35-15-305. Filing required to have benefit of certain provisions. All cooperative corporations, companies, or associations organized before March 5, 1915, and doing business under prior statutes or which have attempted to so organize and do business shall have the benefit of 35-15-303, 35-15-411, and 35-15-412 and be bound thereby on filing with the secretary of state a written declaration, *executed* by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by such provisions."

Section 35. Section 35-15-504, MCA, is amended to read:

"35-15-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger."

Section 36. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

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(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13 and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state and when so filed the articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

Section 37. Section 35-17-203, MCA, is amended to read:

"35-17-203. Amendments to articles of incorporation. At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A statement setting forth the amendment shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. The statement shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation. A certified copy of such certificate shall be filed in the office of the county clerk for the county in which the principal office of the association is located."

Section 38. Section 35-17-204, MCA, is amended to read:

"35-17-204. Adoption of chapter by existing associations. Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be

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signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation."

Section 39. Section 35-17-504, MCA, is amended to read:

"35-17-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located, if the office is in Montana, and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located."

Section 40. Section 35-18-203, MCA, is amended to read:

"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(3) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 41. Section 35-18-204, MCA, is amended to read:

"35-18-204. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the

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members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval by the members, articles of amendment shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(3) The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with.

(4) Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this chapter."

Section 42. Section 35-18-205, MCA, is amended to read:

"35-18-205. Change of principal office without amendment. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed by its president or vice-president, under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this chapter in connection therewith. Such cooperative shall also, within 30 days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein."

Section 43. Section 35-18-206, MCA, is amended to read:

"35-18-206. Existing corporations — reorganization under this chapter — articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy or telephone service in rural areas may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative under this chapter and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

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(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of such corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which such corporation was organized;

(e) the name assumed by such corporation;

(f) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(h) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting.

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of such corporation into a cooperative under this chapter and such articles of conversion were duly complied with.

(4) Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation."

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Section 44. Section 35-18-401, MCA, is amended to read:

"35-18-401. Procedure for merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative", may merge into another cooperative, hereinafter designated the "surviving cooperative" by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective cooperatives parties to the proposed merger, articles of merger in the form approved shall be executed on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this chapter."

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Section 45. Section 35-18-402, MCA, is amended to read:

"35-18-402. Procedure for consolidation. Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative" by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the new cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this chapter."

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Section 46. Section 35-18-404, MCA, is amended to read:

"35-18-404. Dissolution of cooperative which has not commenced business. (1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(f) that no debt of the cooperative remains unpaid; and

(g) that a majority of the incorporators elect that the cooperative be dissolved.

(2) Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this chapter."

Section 47. Section 35-18-405, MCA, is amended to read:

"35-18-405. Dissolution and winding up of cooperative which has commenced business. A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as

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may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the 7 years next preceding the date of such filing of the certificate or, if the cooperative shall not have been in existence for such period, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution which shall thereupon be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this chapter."

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Section 48. Section 35-18-501, MCA, is amended to read:

"35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, dissolution, as the case may be, when executed and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this chapter, he shall upon the payment of the fees as in this chapter provided file the articles so presented in the records of his office, and upon such filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect.

(2) The secretary of state immediately upon the filing in his office of any articles pursuant to this chapter shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion, or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles.

(3) The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2)."

Section 49. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 30, chapter 13, part 2, and the provisions of Title 30, chapter 13, part 2, apply to section 1.

(2) Section 5 is intended to be codified as an integral part of Title 30, chapter 13, part 3, and the provisions of Title 30, chapter 13, part 3, apply to section 5.

Approved March 22, 1983.

CHAPTER NO. 175

AN ACT TO PROVIDE THAT AN APPLICANT FOR AN ADMINISTRATIVE OR SUPERVISORY TEACHER CERTIFICATE WHO IS OTHERWISE QUALIFIED MAY BE ISSUED THE ADMINISTRATIVE OR SUPERVISORY CERTIFICATE IF HE IS ELIGIBLE FOR BUT NOT A HOLDER OF A TEACHER CERTIFICATE ENDORSED FOR TEACHING IN THE SCHOOL IN WHICH HE WOULD BE AN ADMINISTRATOR OR SUPERVISOR; AMENDING SECTION 20-4-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-106, MCA, is amended to read:

"20-4-106. Classifications of teacher and specialist certificates. (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

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(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program which includes a bachelor's degree and a minimum of 1 year of study beyond such degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, secondary instruction, or both and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, secondary instruction, or both and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is *eligible for* a teacher certificate endorsed for teaching in the school or schools in which he would be an administrator or he would supervise. The applicant also shall possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor.

(d) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the several vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of his intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, secondary instruction, or both and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher or specialist certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

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(3) For purposes of evaluating the qualifications of applicants for either teacher or specialist certificates, a year means the instructional period consisting of three quarters or two semesters or other terms which are recognized as an academic year by any unit of the Montana university system or equivalent institution."

Approved March 22, 1983.

CHAPTER NO. 176

AN ACT TO EXCEPT LIVE-IN HOUSEPARENTS UNDER CONTRACT WITH THE STATE SCHOOL FOR THE DEAF AND BLIND FROM THE STATE EMPLOYEE CLASSIFICATION SYSTEM; AMENDING SECTION 2-18-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel *and live-in houseparents* who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer and assistant investment officer of the board of investments; and

(12) four professional staff positions under the board of oil and gas conservation."

Approved March 22, 1983.

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CHAPTER NO. 177

AN ACT REQUIRING USE OF A SAFETY RESTRAINT SYSTEM TO TRANSPORT A CHILD LESS THAN 4 YEARS OLD; ESTABLISHING STANDARDS, EXEMPTIONS, AND PENALTY; PROVIDING FOR ADMISSIBILITY OF EVIDENCE IN CIVIL SUITS WITHOUT PRESUMPTION OF NEGLIGENCE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **"Properly restrained" defined.** As used in this part, "properly restrained" means fastened in a manner prescribed by the manufacturer of the system which permits the system to act as a body restraint, but does not mean a system in which the only body restraint is a safety belt of the type specified in 61-9-410.

Section 2. **Child safety restraint systems — standards — exemptions.** (1) No resident of Montana who is the parent or legal guardian of a child under the age of 2 may transport the child in a motor vehicle owned by the resident or his spouse unless the child is properly restrained.

(2) No resident of Montana who is the parent or legal guardian of a child between 2 and 4 years old or weighing less than 40 pounds may transport the child in a motor vehicle owned by the resident or his spouse unless the child is properly restrained or is restrained in a safety belt of the type specified in 61-9-410.

(3) The division shall by rule establish standards in compliance with [this act] and applicable federal standards for approved types of child safety restraint systems purchased after [the effective date of this act].

(4) No resident or his spouse is required to have more than three child safety restraint systems in a vehicle.

(5) The division may by rule exempt from the requirements of subsection (1) any child who because of a physical or medical condition or body size cannot be placed in a child safety restraint system or safety belt.

Section 3. **Certain vehicles excepted.** [Section 2] is not applicable to a vehicle that:

(1) is a motorbus, schoolbus, taxicab, moped, or motorcycle or is not required to be equipped with safety belts under 49 CFR 571 as it reads on January 1, 1984; or

(2) has a seating capacity as designated by the manufacturer of two persons and there are two persons 4 years of age or older in the vehicle.

Section 4. **Evidence admissible without presumption of negligence.** Evidence of compliance or failure to comply with [section 2] is admissible in any civil action for personal injury or property damage resulting from the use or operation of a motor vehicle, but failure to comply with [section 2] does not alone constitute negligence.

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Section 5. **Penalty.** Violation of [section 2] is punishable as follows:

(1) on initial violation a warning shall be issued. No penalty may be assessed if the violation of [section 2] is corrected within 30 days by providing proof that a child safety restraint system meeting the requirements of [section 2] was purchased or leased and properly installed in the vehicle. If not corrected a citation may be issued and the violation shall be punishable by a fine of not less than $10 or more than $25;

(2) subsequent violation within three years is punishable by a fine of not less than $25 or more than $100.

Section 6. **Codification instruction.** Sections 1 through 5 are intended to be codified as an integral part of Title 61, chapter 9, and the provisions of Title 61, chapter 9, apply to sections 1 through 5.

Section 7. **Effective date.** This act is effective on January 1, 1984.

Approved March 22, 1983.

CHAPTER NO. 178

AN ACT RELATING TO THE LICENSING CRITERIA LIMITING OWNERSHIP OF MONTANA ALCOHOLIC BEVERAGES LICENSES AND STORAGE DEPOTS; PERMITTING SHIPMENTS TO STORAGE DEPOTS; AMENDING SECTIONS 16-3-230, 16-4-102, AND 16-4-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-401, MCA, is amended to read:

"16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection *(6)*, in the case of a license that permits on-premises consumption, the department must find in every case *in which* it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant *will not possess* an ownership interest in *more than one* establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine, or liquor;

(iii) the applicant is a resident of the state and is qualified to vote in a state election;

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(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a) of this section;

(iii) the corporation is authorized to do business in Montana; and

(iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsection (2)(a)(i).

(3) In the case of a license that permits only off-premises consumption, the department must find in every case *in which* it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant *will not possess* an ownership interest in *more than one* establishment licensed under this chapter for all-beverages sales;

(ii) the applicant or any member of his immediate family is without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine, or liquor;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under the age of 19 years; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a) of this section; and

(iii) the corporation is authorized to do business in Montana.

(4) In the case of a license that permits the manufacture or wholesaling of an alcoholic beverage, the department must find in every case in

which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, his rights have been restored;

(iii) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments;

(iv) the applicant is not under the age of 19 years; and

(v) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(ii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a) of this section;

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana.

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), *and (4)(b)* apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

Section 2. Section 16-3-230, MCA, is amended to read:

"16-3-230. Out-of-state beer required to be shipped to wholesaler. All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped, *either directly or via a licensed storage depot,* to a licensed wholesaler and by him unloaded into his warehouse in Montana or subwarehouse in Montana. *A brewer may sell only to wholesalers from a storage depot in Montana and shall maintain records of all beer, including the name or kind received, on hand, and sold, which records may at all times be inspected by any representative of the department.* Said wholesaler shall distribute said beer from such warehouse or subwarehouse and shall keep records at his principal place of business of all beer, including the name or kind received, on hand, sold, and distributed. Said records may at all times be inspected by any member or representative of the department."

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Section 3. Section 16-4-102, MCA, is amended to read:

"16-4-102. Right of brewers to maintain and operate storage depots — annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer, upon the payment to the department of an annual license fee in addition to all other fees and taxes required to be paid by such brewer for each storage depot, to own, lease, maintain, and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this code."

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved March 22, 1983.

CHAPTER NO. 179

AN ACT INCLUDING NURSE SPECIALISTS IN THE LIST OF FREE CHOICES FOR TREATING ILLNESS OR INJURY COVERED BY DISABILITY INSURANCE OR WORKERS' COMPENSATION; AMENDING SECTION 33-22-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-111, MCA, is amended to read:

"33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies of disability insurance, including individual, group, and blanket policies and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, dentist, osteopath, chiropractor, optometrist, chiropodist, psychologist, *or nurse specialist as specifically listed in 37-8-202* for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Approved March 22, 1983.

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CHAPTER NO. 180

AN ACT TO ADD TO THE LIST OF ITEMS THAT MAY BE FORFEITED WHEN USED IN CONNECTION WITH A VIOLATION OF THE DANGEROUS DRUGS LAWS; TO CREATE A REBUTTABLE PRESUMPTION OF FORFEITURE; TO PROVIDE THE MEANS BY WHICH THE PRESUMPTION MUST BE REBUTTED; TO PROVIDE FOR THE DISPOSITION OF DRUG OFFENSE FINES AND OF PROCEEDS OF THE SALE OF FORFEITED ITEMS; AMENDING SECTIONS 44-12-102, 44-12-203 THROUGH 44-12-206, AND 46-18-235, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-12-102, MCA, is amended to read:

"44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 250 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101*; and*

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all

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proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate any violation of Title 45, chapter 9.

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana."

Section 2. Section 44-12-203, MCA, is amended to read:

"44-12-203. Presumption — procedure following answer or expiration of time for answering. *(1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102.*

(2) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court upon motion *must* order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure."

Section 3. Section 44-12-204, MCA, is amended to read:

"44-12-204. Proof required or permitted at hearing. *In order to rebut the presumption of forfeiture:*

(1) an owner of property who has a verified answer on file must prove that the property was not used for the purpose charged;

(2) an owner of property listed in 44-12-102(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without his knowledge or consent;

(3) a claimant of a security interest in the property *who has a verified answer on file must* prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon,

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furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person."

Section 4. Section 44-12-205, MCA, is amended to read:

"44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged, *or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner,* it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged, *and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner,* the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure."

Section 5. Section 44-12-206, MCA, is amended to read:

"44-12-206. Disposition of proceeds of sale. *(1)* Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, *who shall establish and maintain a drug*

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forfeiture fund and deposit the remainder into the fund, except as provided in subsection *(1)(c)*;

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, *who shall establish and maintain a drug forfeiture fund and deposit the remainder into the fund.*

(2) All proceeds from any source that are deposited into a drug forfeiture fund must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug enforcement and education."

Section 6. Section 46-18-235, MCA, is amended to read:

"**46-18-235. Disposition of money collected as fines and costs.** The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, *except that if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture fund maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose.*"

Approved March 22, 1983.

CHAPTER NO. 181

AN ACT ALLOWING THE SPOUSE OF A RETIRED PUBLIC EMPLOYEE TO REMAIN A MEMBER OF A GROUP INSURANCE PLAN OR TO CONVERT A GROUP INSURANCE POLICY; AMENDING SECTION 2-18-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-704, MCA, is amended to read:

"**2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued after June 30, 1977, under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until he becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless he is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless he is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the

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deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued after June 30, 1983, under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) A person electing to remain a member of the group under *subsections* (1) *and (2)* must pay the full premium for his coverage and for that of his covered dependents."

Section 2. **Effective date.** This act is effective June 30, 1983.

Approved March 22, 1983.

CHAPTER NO. 182

AN ACT PROHIBITING CHANGING BOUNDARIES OF A COUNTY COMMISSIONER DISTRICT WITHIN 6 MONTHS PRECEDING A PRIMARY ELECTION; AMENDING SECTION 7-4-2102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2102, MCA, is amended to read:

"7-4-2102. Division of county into commissioner districts. (1) In every county of the state, following each federal decennial census, the board of county commissioners shall divide their respective counties into three commissioner districts, as compact and equal in population and area as possible. Such apportionment may take place at any time for the purpose of equalizing in population and area such commissioner districts. However, no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected. No change in the boundaries of any commissioner district shall be made within 6 months next preceding *a primary election.*

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(2) The district judge or judges of the county shall review the action of the commissioners to determine whether or not such action meets the requirements of this section.

(3) Sections 7-4-2102 through 7-4-2104 shall not apply to counties adopting an optional or alternative form of government authorized by law."

Approved March 22, 1983.

CHAPTER NO. 183

AN ACT TO ALLOW THE TRUSTEES OF A SCHOOL DISTRICT TO MEET AT ANY TIME FROM FEBRUARY 1 THROUGH THE FOURTH MONDAY IN JUNE TO ADOPT A PRELIMINARY BUDGET FOR THE ENSUING SCHOOL FISCAL YEAR; TO REQUIRE THAT THE TRUSTEES PUBLISH A NOTICE OF THE MEETING AT LEAST 2 WEEKS IN ADVANCE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE DISTRICT; TO ELIMINATE THE REQUIREMENT THAT THE COUNTY SUPERINTENDENT PUBLISH A NOTICE OF THE PRELIMINARY BUDGET MEETING; AMENDING SECTION 20-9-113, MCA; REPEALING SECTION 20-9-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-113, MCA, is amended to read:

"20-9-113. Preparation and adoption of preliminary budget by trustees. (1) The trustees of each district shall meet at their regular place of meeting *at any time from February 1 through* the fourth Monday in June, *at the discretion of the board,* to adopt a preliminary budget for the next ensuing school fiscal year. This budget meeting may be continued from day to day but shall not exceed 5 days in total. Any taxpayer in the district may attend such meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included in such budget. The preliminary budget shall include all funds which require the adoption of a budget and which the trustees wish to utilize during the ensuing year.

(2) The proposed expenditures adopted as the preliminary budget shall be entered on the appropriate portion of the budget form. The amount of the preliminary general fund budget for a district shall not exceed the foundation program of such district except in the manner permitted by the laws of Montana. If any appropriation item of the preliminary budget provides for the payment of wages or salaries to more than one person, the district shall attach to the preliminary budget a separate listing of each position of employment with the budgeted amount of compensation for each position.

(3) After the adoption of the preliminary budget by the trustees, the chairman of the trustees and the clerk of the district shall sign the budget

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form, and it shall constitute the preliminary budget for the district. The trustees shall send both copies of the adopted preliminary budget with all appendages and any other information required by law to the county superintendent on or before the fifth day after the fourth Monday of June."

Section 2. **Notice of preliminary budget meeting.** At least 2 weeks before the first meeting day on adoption of a preliminary budget for the ensuing school fiscal year, as required in 20-9-113, the trustees of a district shall publish a notice of the meeting at least one time in a newspaper of general circulation in the district. The notice must state that any taxpayer in the district may attend the meeting and be heard on the preliminary budget.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20 apply to section 2.

Section 4. **Repealer.** Section 20-9-112, MCA, is repealed.

Approved March 22, 1983.

CHAPTER NO. 184

AN ACT TO CREATE A GENERAL OBLIGATION BOND AND NOTE LAW UNDER WHICH THE STATE MAY ISSUE GENERAL OBLIGATION BONDS AND NOTES AS AUTHORIZED BY PARTICULAR BOND ACTS APPROVED BY THE LEGISLATURE; TO MODIFY THE CONDITIONS UNDER WHICH THE BOARD OF EXAMINERS MAY REFUND BONDS AND DEBENTURES ISSUED BY THE STATE; AMENDING SECTIONS 17-5-301, 17-5-303 THROUGH 17-5-305, AND 18-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Bond act" means an act approved by the vote of two-thirds of the members of each house of the legislature or by a majority of the electors voting thereon, authorizing the issuance of bonds for the purpose set forth therein and adopting [sections 1 through 6] by reference.

(3) "Bonds" means general obligation bonds, notes, or other evidences of indebtedness issued in accordance with the provisions of [sections 1 through 6].

(4) "Capital projects account" means a separate general obligation bond and note account created within the capital projects fund type established in 17-2-102.

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(5) "Debt service account" means a separate general obligation bond and note account created within the debt service fund type established in 17-2-102.

(6) "Department" means the department of administration created in 2-15-1001.

(7) "Treasurer" means the ex officio state treasurer, referred to in 2-15-1002.

Section 2. **Authority to issue general obligation bonds and notes.** (1) When authorized by and within the limits of a bond act and as provided in [sections 1 through 6], the board may issue and sell bonds of the state in such manner as it considers necessary and proper to provide funds for the purpose set forth in the bond act.

(2) The full faith and credit and taxing powers of the state must be pledged for the payment of all bonds and notes issued pursuant to [sections 1 through 6], with all interest thereon and premiums payable upon the redemption thereof. All principal, interest, and redemption premium, if any, becoming due during a fiscal year must be included in the state budget for such year, and sufficient revenues must be appropriated for payment thereof from the general fund and, if the general fund is not sufficient, from any other funds of the state legally available for payment thereof. No bonds may be issued to cover deficits incurred because appropriations exceeded anticipated revenue. Money transferred for the payment of bonds and notes must be deposited in the debt service account.

(3) No additional long-range building bonds may be issued under Title 17, chapter 5, part 4.

Section 3. **Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds.** (1) In furtherance of each bond act, bonds may be issued by the board upon request of the department in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at such rate or rates, maturing at such times not exceeding 30 years from date of issue, subject to redemption at such earlier times and prices and on such notice, and payable at the office of such fiscal agency of the state as the board shall determine, subject to the limitations contained in [sections 1 through 6] and in the bond act.

(2) In all other respects the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. Action taken by the board under [this act] must be by a majority vote of its members. The state treasurer shall keep a record of all such bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under [sections 1 through 6].

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(4) The board is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available therefor in the general fund or from the proceeds of the bonds, in the discretion of the board.

(5) All proceeds of bonds and notes issued under [sections 1 through 6] must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account.

Section 4. **Use of capital projects account.** The capital projects account must be segregated by the treasurer from all other money in that or any other account in the state treasury and used only to pay costs of the projects for which bonds were issued, in accordance with the respective bond accounts, upon order of the department acting within the limits of the authority conferred upon it by the legislature.

Section 5. **Bond anticipation notes — when issued — payment of principal and interest.** (1) When the board has been authorized to issue and sell bonds under [sections 1 through 6], it may, pending the issuance of the bonds, issue in the name of the state temporary notes in anticipation of the money to be derived from the sale of the bonds. The notes must be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes may be used only for the purposes for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 1 year after the date of issue may be issued from time to time as the proceeds thereof are needed. Such notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify:

(i) the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any one time;

(ii) the rate or rates of interest, the maximum rate of interest, or the interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) to be incurred through the issuance of such notes; and

(iii) the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in

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its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board, or the state treasurer in the event of such delegation. The board in its discretion, but subject to the limitations contained in this section, may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either in or outside of the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving them.

Section 6. **Bid security.** Notwithstanding 18-1-203, in any case where bids are solicited for the purchase and sale of bonds or notes under [sections 1 through 6], the bid must be accompanied by lawful money of the United States or a cashier's check, certified check, bank money order, or bank draft drawn and issued by any federally chartered or state-chartered bank that is insured by the federal deposit insurance corporation, in such amount as may be required by the board or by the state treasurer under authority of [section 5].

Section 7. Section 17-5-301, MCA, is amended to read:

"17-5-301. Refunding bonds or debentures authorized — interest rate. The board of examiners is hereby authorized and empowered to refund any issue of bonds, highway or other debentures heretofore issued by the state and which are outstanding or which may hereafter be issued by the state whenever in the judgment of such board it shall be deemed for the best interests of the state to do so. *Refunding* bonds or debentures shall not be issued in any greater amount than will be required to pay the principal *and interest* of the bonds or debentures to be refunded, *costs of issuance,* plus any defaulted interest thereon."

Section 8. Section 17-5-303, MCA, is amended to read:

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"17-5-303. Application of refunding bond law. All of the provisions of the act authorizing the issuance of the bonds or debentures which are to be refunded, insofar as the same relate to the issuance and sale, term and rate of interest, tax levies or funds for the payment and interest thereof, and time and manner of such payments *shall apply fully to such refunding bonds or debentures*, except insofar as the same may be in conflict with the provisions of this part *or with the provisions of any law authorizing particular refunding bonds.*"

Section 9. Section 17-5-304, MCA, is amended to read:

"17-5-304. Cost and expense of refunding. The board of examiners may require the purchaser to bear the cost and expense of refunding any issue of bonds or debentures in connection with the bid submitted, or the cost and expense may be paid out of the sinking and interest fund when there is money in such fund. The balance remaining in such sinking and interest fund shall be transferred *in accordance with the provisions under which the refunded bonds were issued or as otherwise provided by law.*"

Section 10. Section 17-5-305, MCA, is amended to read:

"17-5-305. Sale of bonds and debentures. The refunding bonds or debentures which may be issued under the provisions of this part shall be sold by the board of examiners in such manner as they shall deem for the best interests of the state, provided that:

(1) none thereof shall be sold at less than its par value; and

(2) if the state shall hold any bonds or debentures to be refunded by any such issue of refunding bonds or debentures as investments of institutional or other funds, the same may be exchanged for the refunding bonds or debentures if such exchange be authorized by the proper state officers or board."

Section 11. Section 18-1-203, MCA, is amended to read:

"18-1-203. Form of security. (1) *Except as provided in subsection (4), in* all cases under 18-1-202(1)(a) the bidder, offeror, or tenderer shall accompany any bid with either:

(a) lawful moneys of the United States;

(b) a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana; or

(c) a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.

(2) *Except as provided in subsection (4), in* all cases under 18-1-202(1)(b) the bidder shall accompany the bid with the security described in (1)(a) or (1)(b) above.

(3) The moneys or, in lieu of moneys, any of such bank instruments or bid bonds shall be payable directly to the public authority soliciting or advertising for bids.

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(4) The provisions of this section do not apply to bonds issued under [sections 1 through 6]."

Section 12. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1983.

CHAPTER NO. 185

AN ACT LICENSING AND REGULATING PERSONS WHO PURPORT TO BE ABLE TO DETECT DECEPTION, VERIFY TRUTHFULNESS, OR PROVIDE A DIAGNOSTIC OPINION OF DECEPTION OR TRUTHFULNESS THROUGH THE USE OF ANY DEVICE OR INSTRUMENT CAPABLE OF MEASURING OR RECORDING BODILY RESPONSES OR PSYCHOPHYSIOLOGICAL ACTIVITIES; PROVIDING LICENSING QUALIFICATIONS; PROVIDING FOR REVOCATION AND SUSPENSION OF LICENSES; REQUIRING CONTINUING EDUCATION FOR RENEWAL OF LICENSES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF COMMERCE; PROHIBITING THE RESULTS OF A POLYGRAPH EXAMINATION FROM BEING INTRODUCED OR ADMITTED INTO EVIDENCE; AND PROVIDING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** In [sections 1 through 15], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) "Examinee" means an individual who is being examined, tested, or questioned by an examiner for the purpose of detecting deception or verifying truthfulness.

(3) "Examiner" means any person who:

(a) purports to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument;

(b) represents that he can or does offer the service of detecting deception, verifying truthfulness, r providing a diagnostic opinion of deception or truthfulness throu.h the use of a mechanical device or instrument; or

(c) uses a mechanical device or instrument to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding deception or truthfulness.

Section 2. **Minimum standards for instruments or devices.** (1) No person may use or attempt to use any instrument or device for the

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purpose of detecting deception, verifying truthfulness, or assisting in the reporting of a diagnostic opinion as to deception or truthfulness unless the instrument or device, at a minimum, is capable of visually, permanently, and simultaneously recording indications of an examinee's:

(a) cardiovascular pattern;

(b) respiratory pattern; and

(c) galvanic skin response pattern.

(2) Indications of other psychophysiological changes or bodily responses may also be recorded in addition to the minimum standards provided in subsection (1).

(3) The operation, use, or attempted use by an examiner of an instrument or device that does not meet the minimum requirements provided in subsection (1) is subject to the penalties provided in [section 15].

Section 3. **Powers and duties of department.** The department shall:

(1) administer and enforce the provisions of this chapter;

(2) adopt rules in accordance with the Montana Administrative Procedure Act to carry out the provisions of [this act]; and

(3) investigate all complaints concerning violations of [sections 1 through 15] unless the department determines that any such complaint is frivolous or otherwise lacking in merit.

Section 4. **License required.** No person may, unless licensed under the provisions of [sections 1 through 15]:

(1) hold himself out to be an examiner;

(2) use or attempt to use any mechanical device or instrument for the purpose of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding deception or truthfulness;

(3) purport to detect deception or verify truthfulness through mechanical devices or instruments; or

(4) advertise or represent that he can or does offer the service of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding an individual's deception or truthfulness through mechanical devices or instruments.

Section 5. **Issuance of examiner's license — reciprocity.** (1) Upon application to the department and payment of the required license fee, a person must be issued an examiner's license if he has satisfied the department by affidavit or otherwise that he meets the minimum requirements for licensing provided in [section 6].

(2) Except as provided in subsection (3), an applicant licensed as a polygraph examiner in another state must, upon application to the department and payment of the required license fee, be issued an examiner's

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license without examination if he satisfies the department by affidavit or otherwise that he:

(a) has legally administered polygraph examinations in the state in which he is licensed for at least 1 year before making application under this subsection; and

(b) meets the requirements for licensing set forth in [section 6].

(3) No license may be issued without examination under subsection (2) unless the state in which the applicant is licensed has and maintains licensing requirements substantially equivalent to those provided in [sections 1 through 15] and grants reciprocity to examiners licensed in Montana under terms similar to those provided in this section.

Section 6. **Issuance of examiner's license with examination.** Upon application and payment of the required fee, an applicant must be granted a license as an examiner if he:

(1) is at least 18 years old;

(2) is a citizen of the United States;

(3) is of good moral character;

(4) has successfully completed a course in polygraph instruction at an American polygraph association accredited institution;

(5) has a high school diploma from an accredited high school or its equivalent; and

(6) has successfully passed an examination conducted by the department that tests the applicant's general knowledge of the use of the polygraph or a comparable examination conducted by another state whose law requires successful completion of the examination as qualification for a license.

Section 7. **Fees.** (1) The department shall adopt and charge nonrefundable application, license, and license renewal fees, commensurate with costs in accordance with 37-1-134.

(2) All fees collected by the department under this section must be deposited in the earmarked revenue fund for the use of the department in administering [sections 1 through 15].

Section 8. **Continuing education.** The department shall establish by rule minimum requirements of professional education and training, consistent with field of learning and with the standards of professional organizations, for renewal of licenses.

Section 9. **Terms of license — renewal.** (1) An examiner's license is issued for 1 year or such portion as remains at the time of issuance and may be renewed, if it has not been revoked or suspended, on or before the date of expiration of the license. A license that is not renewed expires at midnight on the date set by the department.

(2) An examiner whose license has expired may at any time within 2 years after the expiration date obtain a renewal license without examination upon payment of a renewal fee to the department. An examiner whose

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license expired while he was on active duty in the armed forces of the United States or the national guard may, notwithstanding the provisions of 10-1-605, renew his license without examination within 2 years after discharge from service.

Section 10. **Form of license — display of license.** (1) A license issued under the provisions of [sections 1 through 15] must be in the form determined by the department and must include:

(a) the name of the examiner;

(b) the name under which the examiner is to operate; and

(c) the number of the license and the date on which the license was issued.

(2) The license must at all times be posted in a conspicuous place in the principal place of business of the examiner.

Section 11. **Pocket card.** Upon the issuance of a license, a pocket card of such size, design, and content as determined by the department must be issued without charge to the examiner, which card is evidence that the examiner is duly licensed.

Section 12. **Inadmissibility of results as evidence.** Results of a polygraph examination or other test given by an examiner may not be introduced or admitted as evidence in a court of law.

Section 13. **Suspension and revocation.** An examiner's license may be suspended for a fixed period or may be revoked if, after a hearing before the department, it has been determined by competent evidence that the examiner:

(1) has obtained the license by fraudulent representation;

(2) employs misrepresentation, false promises, or misleading advertising for the purpose of directly or indirectly obtaining business;

(3) is incompetent for any reason to act as an examiner;

(4) has allowed his license to be used by an unlicensed person;

(5) has violated the provisions of [sections 1 through 15] or any rule adopted by the department;

(6) has willfully or negligently aided or abetted another examiner in violating the provisions of [sections 1 through 15] or any rule adopted by the department;

(7) has failed to provide, within a reasonable amount of time, information requested by the department relating to a formal complaint filed with the department involving the examiner;

(8) has been adjudicated by a decree of court to be seriously mentally ill;

(9) has failed to inform the examinee of all specific question areas to be explored before questions are actually asked during an examination;

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(10) has conducted an examination without having informed the examinee that:

(a) he has the right to refuse to participate in the examination;

(b) he has the right to halt the examination in progress at any time;

(c) he is not required to answer any questions or give any information; and

(d) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise agreed to in writing; or

(11) has failed to inform the examinee of the results of an examination if requested.

Section 14. **Hearing.** Before refusing an application or suspending or revoking a license, the department shall notify the applicant or examiner by mail not less than 30 days before taking any action. The notice must advise the applicant of the intended action and must include a statement that the applicant or examiner may request a hearing within 20 days of receipt of the notice. If the applicant or examiner requests a hearing within that period, a hearing must be granted, and contested case provisions of the Montana Administrative Procedure Act apply to the hearing. An applicant or examiner who is aggrieved by a final decision in a contested case is entitled to judicial review under the Montana Administrative Procedure Act.

Section 15. **Penalty.** Any person who violates any of the provisions of [sections 1 through 15] is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment in the county jail for a period not to exceed 6 months or both such fine and imprisonment.

Section 16. **Codification instruction.** Sections 1 through 15 are intended to be codified as an integral part of Title 37, and the provisions of Title 37, chapter 1, apply to sections 1 through 15, except that nothing contained in Title 37, chapter 1, grants additional rulemaking authority to the department for the purpose of administering this act.

Approved March 22, 1983.

CHAPTER NO. 186

AN ACT CLARIFYING THE PAYMENT OF DEATH BENEFITS UNDER THE MUNICIPAL POLICE OFFICERS' AND THE MONTANA FIREFIGHTERS' UNIFIED RETIREMENT ACTS; DEFINING SURVIVING SPOUSE AND DEPENDENT CHILD; AMENDING SECTIONS 19-9-104, 19-9-911, 19-9-1007, 19-13-104, AND 19-13-903, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-104, MCA, is amended to read:

"19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(6) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(7) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(8) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(9) "Fund" means the agency account in the treasury system designated for the use of the plan.

(10) "Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65.

(11) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(12) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(13) "Member's annuity" means monthly payments for life derived from member contributions.

(14) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(15) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if

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none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(16) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(17) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(18) "Plan" means the municipal police officers' retirement system created by this chapter.

(19) "Police officer" means a law enforcement officer employed by an employer.

(20) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(21) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(22) "Retirement allowance" means the employer annuity plus the member's annuity.

(23) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

(24) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(25) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer."

Section 2. **Payment of death benefits in absence of spouse or child.** If a member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the administrator, the administrator shall pay to the designated beneficiary an amount equal to the member's contributions less any retirement benefits paid to the member before his death. If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, this amount must be paid to the member's estate.

Section 3. Section 19-9-911, MCA, is amended to read:

"19-9-911. Death benefits. (1) A member's retirement allowance shall be paid first to the member during his lifetime and, upon his death, in the manner and to the persons designated in subsection (2).

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(2) Upon the death of a police officer before or after retirement, his surviving spouse, if there is one, shall, as long as such spouse remains *unmarried*, be paid from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent *child*, collectively if there is more than one, shall receive the same monthly payments a surviving spouse would receive *as long as the child or one of the children remains dependent as defined in 19-9-104.* The payments shall be made to *the child's* duly appointed, qualified, and acting guardian for *the child's* use. If there is more than one such child, upon each child *no longer qualifying as dependent under 19-9-104*, the pro rata payments to that child shall cease and shall be made to the remaining children until all the children *are no longer dependent.*"

Section 4. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Supplement to certain pensions. (1) The payment for each fiscal year to the police officers, *surviving* spouses, or *dependent* children described in subsections (2)(a) through (2)(c) may be not less than one-half of the base salary paid in the previous calendar year in the appropriate city or town to newly confirmed police officers, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase.

(2) On or before April 1 of each year, the department of administration shall make a report including the following information:

(a) the names of all police officers who are receiving payments from the plan as of the date of the report and were receiving payments from a prior plan before July 1, 1975;

(b) the names of all *surviving* spouses or *dependent* children who are receiving payments from the plan because of the death of a police officer who was receiving payments from a prior plan before July 1, 1975;

(c) the names of all *surviving* spouses or *dependent* children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of *dependent* children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each *surviving* spouse or *dependent* child (or children) described in subsection (2)(b) or (2)(c);

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(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from a prior plan before July 1, 1975, *his surviving* spouse or *dependent* children *are* entitled to receive payments from the plan, the amount which would have been paid to an eligible *surviving* spouse of such police officer had that spouse been receiving payments in the base fiscal year;

(e) the base salary for the previous calendar year of a newly confirmed police officer of each city or town participating in the plan.

(3) The department of administration shall compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the base salary for the previous calendar year of a newly confirmed police officer of the appropriate city or town. The difference shall be reported to and paid by the state auditor out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512(3) to the administrator after the end of each fiscal year, but no later than September 1. This payment is in addition to the payment to be made by the state auditor under 19-9-702. The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 after the end of each fiscal year but no later than September 1, until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are to be made to reimburse the retirement account for funds advanced to implement this section.

(5) If more than one *dependent* child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such *dependent* children under this section shall be determined as if there were one such *dependent* child and the supplementary payment shall be made to the *dependent* children collectively."

Section 5. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Board" means the retirement board described in 2-15-1009.

(3) "Credited service" means the aggregate of a member's prior service and membership service.

(4) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

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(5) "Employer" means any city that is of the first or second class or that elects to join this plan under 19-13-108.

(6) "Final average salary" means the monthly compensation of a member hired on or after July 1, 1981, averaged over the last 36 months of his active service or, if he has not been a member that long, over the period of his membership.

(7) "Firefighter" means a person employed as a full- or part-paid firefighter by an employer.

(8) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(9) "Fund" means the agency account in the state treasury system designated for the use of the plan.

(10) "Member" means a person who is employed by an employer as a full- or part-paid firefighter or who is entitled to a retirement allowance by virtue of his service to an employer as a firefighter.

(11) "Member contributions" means the total of the deductions from a member's compensation made during a period of active membership under this chapter or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(12) "Membership service" means a period of employment with an employer occurring after July 1, 1981, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(13) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of credited service.

(14) "Monthly compensation" means:

(a) for a full-paid firefighter, the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for his service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class, 15% of the average regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all newly confirmed, active firefighters employed by cities of the second class on July 1 of each year.

(15) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created

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for urban firefighting services, or the entire county included in the county-municipal consolidation.

(16) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for his service as a firefighter.

(17) "Plan" means the municipal firefighters' retirement system created by this chapter.

(18) "Prior plan" means the fire department relief association plan of a city that elects to join the plan under 19-13-108 or the fire department relief association plan of a city of the first or second class.

(19) "Prior service" means a period of employment as a firefighter for which credit was granted to a member under a prior plan and has been transferred to this plan.

(20) "Retirement allowance" means the monthly benefit payable after service or disability retirement.

(21) "Retirement date" means the date on which the first payment of the retirement or disability benefits of a member or a beneficiary is payable.

(22) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(23) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a firefighter."

Section 6. Section 19-13-903, MCA, is amended to read:

"19-13-903. Payment of death benefits in absence of spouse or child. If a member dies without leaving a surviving spouse or *child* and if the member had designated a beneficiary in writing to the administrator, the administrator shall *pay to the designated beneficiary an amount equal to the member's contributions less any retirement benefits paid to the member before his death.* If the deceased member *did* not *designate* a beneficiary *or the beneficiary predeceased the member, this amount must* be paid to *the member's* estate."

Section 7. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 19, chapter 9, part 9, and the provisions of Title 19, chapter 9, apply to section 2.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1983.

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CHAPTER NO. 187

AN ACT EXTENDING THE TIME THAT JUDICIAL PROCEEDINGS ARE STAYED UPON TRANSMISSION OF ADDITIONAL EVIDENCE TO THE PUBLIC SERVICE COMMISSION AND ELIMINATING AUTOMATIC TRANSMISSION OF ADDITIONAL EVIDENCE ABSENT JUDICIAL RULING; AMENDING SECTION 69-3-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-404, MCA, is amended to read:

"69-3-404. Review confined to record — exceptions. (1) Except as otherwise provided in this section, review shall be conducted by the court without a jury and shall be confined to the record.

(2) In cases of alleged irregularities in procedure before the agency not shown in the record, evidence thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(3) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court, before proceeding to render judgment may transmit a copy of such evidence to the commission and, if such transmission is made, shall stay further proceedings in said action for *35* days from the date of such transmission. The court shall, within *14* days after the introduction of such evidence, decide whether or not to transmit a copy of such evidence to the commission. The court is considered to have ruled that the evidence *need not* be transmitted to the commission unless it orders otherwise within such *14-day* period. Upon receipt of such evidence, the commission shall consider the same and may modify, amend, or rescind its order relating to such rate, fare, charge, classification, joint rate, regulation, practice, or service complained of in said action and shall report its action thereon to said court within *30* days from the receipt of such evidence.

(4) If the commission *rescinds* its order complained of, the action shall be dismissed. If it *alters*, *modifies*, or *amends* the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order *is not* rescinded or changed by the commission, judgment shall be rendered upon such original order."

Approved March 22, 1983.

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CHAPTER NO. 188

AN ACT TO WAIVE CAMPING FEES FOR TOTALLY DISABLED PERSONS; AMENDING SECTION 23-1-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-105, MCA, is amended to read:

"23-1-105. Fees and charges — golden years pass — disabled person waiver. (1) The department shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided and to grant such concessions as it may deem advisable, except as provided in *subsections* (2) *and (3).* All moneys derived from the activities of the department shall be deposited in the state treasury in the earmarked revenue fund to the credit of the department.

(2) Any Montana resident as defined in 87-2-102 who is 65 years of age or older may purchase a "Montana state golden years pass" for $1 which, when attached to his or her vehicle, allows the passengers of that vehicle to camp free in Montana state parks, recreation areas, and fishing access sites. This pass is valid for the lifetime of the individual.

(3) (a) The fees established by the department under subsection (1) are waived for a totally disabled person. A person claiming waiver under this subsection shall provide to the department proof that he is totally disabled, as certified by a licensed Montana physician.

(b) For purposes of this section, "totally disabled" means a physical or mental condition that results in the individual having no reasonable prospect of regular employment of any kind, which condition is expected to last for the rest of his life."

Approved March 22, 1983.

CHAPTER NO. 189

AN ACT TO INCREASE THE TIME FOR WHICH SENTENCE FOR ANY OFFENSE MAY BE DEFERRED IF RESTITUTION IS IMPOSED; AMENDING SECTION 46-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, *except as otherwise provided,* not exceeding 1 year for any misdemeanor or for a period not

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exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 90 days;

(iii) conditions for probation;

(iv) restitution, *as provided in subsection (2)*;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court appointed counsel as provided in 46-8-113;

(viii) community service;

(ix) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(x) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for *each* particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(x).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If restitution is imposed as a condition under subsection (1)(a) or (1)(b), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

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(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended."

Approved March 23, 1983.

CHAPTER NO. 190

AN ACT ALLOWING THE INITIAL PERIOD OF APPROVAL FOR A PRELIMINARY PLAT OF A PROPOSED SUBDIVISION BY A LOCAL GOVERNING BODY TO RANGE FROM 1 YEAR TO 3 YEARS; AMENDING SECTION 76-3-610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-610, MCA, is amended to read:

"76-3-610. Effect of approval of preliminary plat. (1) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than *3* calendar *years or less than 1 calendar year.* At the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than 1 calendar year, except that the governing body may extend its approval for a period of more than 1 year if that approval period is included as a specific condition of a written agreement between the governing body and the subdivider, according to 76-3-507.

(2) After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within the original or extended approval period as provided in subsection (1)."

Approved March 23, 1983.

CHAPTER NO. 191

AN ACT ESTABLISHING BASIC PEACE OFFICER EMPLOYMENT STANDARDS AND EDUCATIONAL REQUIREMENTS TO BE COMPLETED WITHIN 1 YEAR OF THE APPOINTMENT OF DEPUTY SHERIFFS, UNDERSHERIFFS, POLICE OFFICERS, HIGHWAY PATROLMEN, FISH AND GAME WARDENS, CAMPUS SECURITY OFFICERS, AND AIRPORT POLICE OFFICERS; ALLOWING THE BOARD OF CRIME CONTROL TO GRANT EXTENSIONS TO THE TIME FOR COMPLIANCE WITH THOSE STANDARDS; AMENDING SECTION 7-32-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-303, MCA, is amended to read:

"7-32-303. Peace officer employment, education, and certification standards. *(1) For purposes of this section, unless the context*

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clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrolman, fish and game warden, campus security officer, or airport police officer.

(2) No sheriff of a county, mayor of a city, *board, commission,* or other person authorized by law to appoint *peace officers* in this state shall appoint any person *as a peace officer* who does not meet the *following qualifications plus any additional* qualifying standards for employment promulgated by the board of crime control:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which he could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment a peace officer must take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof must be given to the board of crime control by the employing authority.

(5) (a) Except as provided in subsections (b) and (c) of this subsection, it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the board of crime control. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the

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basic course as required by this subsection forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the board of crime control and whose last date of employment as a peace officer was less than 36 months prior to the date of his present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a).

(c) A peace officer who has completed a basic peace officer's course in another state and whose last date of employment as a peace officer was less than 36 months prior to the date of his present appointment as a peace officer may, within 1 year of his initial appointment as a peace officer within this state, satisfy his basic educational requirements by successfully passing a basic equivalency test administered by the Montana law enforcement academy and successfully completing a legal training course conducted by the academy. If the peace officer fails the basic equivalency test, he must complete the basic course within 120 days of the date of the test.

(6) The board of crime control may extend the 1 year time requirements of subsections (a) and (c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances which make the extension necessary. Factors which the board may consider in granting or denying the extension include but are not limited to: illness of the peace officer or a member of his immediate family; absence of reasonable access to the basic course or the legal training course; and an unreasonable shortage of personnel within the department. The board may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment shall, upon application to the board of crime control, be issued a basic certificate by the board, certifying that the peace officer has met all the basic qualifying peace officer standards of this state."

Approved March 23, 1983.

CHAPTER NO. 192

AN ACT REESTABLISHING THE MONTANA OUTFITTERS' COUNCIL UNDER EXISTING STATUTORY AUTHORITY AND RULES; PROVIDING A PROCEDURE FOR FILLING A VACANCY ON THE COUNCIL; PROVIDING FOR COUNCIL MEMBERS' COMPENSATION AND EXPENSES; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ESTABLISH FEES COMMENSURATE WITH COSTS; AMENDING SECTIONS 2-8-103, 2-15-3403, AND 87-4-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Montana Outfitters' Council and requires a performance evaluation of the Council by the Legislative Audit Committee; and

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WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Montana Outfitters' Council be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The Montana outfitters' council, created by 2-15-3403, is reestablished with its existing statutory authority and rules for 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of commerce, created by 2-15-1881;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of commerce, created by 2-15-1802;

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(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) public service commission, department of public service regulation, created by 69-1-102;

(h) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(i) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

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(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates on July 1, 1989: Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403."

Section 3. Section 2-15-3403, MCA, is amended to read:

"**2-15-3403. Montana outfitters' council.** (1) There is a Montana outfitters' council.

(2) The council consists of seven members. Each member shall be a licensed outfitter and shall represent one of the seven fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of the outfitters to be held in the city where the regional headquarters is located during the month of March. A majority vote cast by written ballot of all the outfitters in attendance at the meeting shall determine the *member* from the district. At the election an alternate *member* shall also be elected by written ballot to serve if the *member* is unable to act.

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(3) If a member or alternate resigns or a vacancy exists for any reason on the council, the council at its next official meeting after the vacancy occurs shall recommend to the director of the department of fish, wildlife, and parks the names of two licensed outfitters residing in the administrative region where the vacancy occurred to fill the vacancy for the remainder of the unexpired term. If a vacancy cannot be filled from that administrative region, the appointment must be made from an adjoining region. If a vacancy cannot be filled from an adjoining region, the appointment must be made from any remaining region. The director shall fill the vacancy from the names submitted.

(4) The members shall serve staggered 3-year terms and take office on the day they are elected.

(5) The council is allocated to the department.

(6) The council is not subject to the provisions of 2-15-122.

(7) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5)."

Section 4. Section 87-4-127, MCA, is amended to read:

"**87-4-127. Fees.** *(1) The department shall establish fees commensurate with costs as provided in 37-1-134.*

(2) Applications shall be accompanied by a license fee as *specified by the department.*

(3) If *a* nonresident resides in a state requiring residents of the state of Montana to pay in excess of *the amount established by the department* for a similar license, the fee for such nonresident outfitter's or professional guide's license shall be the same amount as the higher fee charged in the state where the nonresident resides. All fees collected under this part shall be deposited as provided in 87-1-601.

(4) The license fee shall be used to investigate the applicant, to enforce this part, and for administrative costs."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1983.

CHAPTER NO. 193

AN ACT TO ROUND UNEMPLOYMENT COMPENSATION AMOUNTS TO THE NEAREST LOWER FULL DOLLAR AMOUNT; AND TO REMOVE THE REQUIREMENT THAT THE DEPARTMENT OF LABOR AND INDUSTRY PUBLISH ANNUALLY AN UNEMPLOYMENT COMPENSATION BENEFIT SCHEDULE; AMENDING SECTIONS 39-51-2201 AND 39-51-2202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2201, MCA, is amended to read:

"**39-51-2201. Weekly benefit amount — determination of average weekly wage.** *(1) An* eligible individual's weekly benefit

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amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. *The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount.* However, such amount shall not be less than the minimum, or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of $1, shall be computed to the nearest *lower full dollar amount.*

(3) The minimum weekly benefit amount shall be 15% of the average weekly wage. *The minimum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.*"

Section 2. Section 39-51-2202, MCA, is amended to read:

"**39-51-2202. Partial payment of benefits.** Partial payment for a week of unemployment as used in this section shall be the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of his weekly benefit amount. Such wages and the one-fourth weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest *lower full* dollar *amount.*"

Approved March 23, 1983.

CHAPTER NO. 194

AN ACT TO PROVIDE FOR A 5-YEAR STATUTE OF LIMITATIONS FOR TAXES ON CENTRALLY ASSESSED PROPERTY, COAL SEVERANCE TAXES, OIL AND GAS SEVERANCE TAXES, MINING LICENSE TAXES, RESOURCE INDEMNITY TRUST TAXES, ELECTRIC ENERGY PRODUCERS' LICENSE TAXES, TELEPHONE COMPANY LICENSE TAXES, FREIGHT LINE COMPANY LICENSE TAXES, COAL RETAILER'S LICENSE TAXES, AND CEMENT TAXES; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statute of limitations.** (1) Except as otherwise provided in this section, no deficiency may be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was

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filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) No refund or credit may be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

Section 2. **Codification instructions.** Section 1 is intended to be codified as an integral part of Title 15, chapters 23 (part 1), 35, 36, 37 (parts 1 and 2), 38, 51, 53, 55, 58, and 59 (parts 1 and 2), and the provisions of Title 15, chapters 23 (part 1), 35, 36, 37 (parts 1 and 2), 38, 51, 53, 55, 58, and 59 (parts 1 and 2), apply to section 1.

Section 3. **Effective date — applicability.** (1) This act is effective on passage and approval and, except as provided in subsection (2), applies retroactively within the meaning of 1-2-109 to taxable periods covered by returns due after December 31, 1980.

(2) Subsection (3) of section 1 is retroactively applicable within the meaning of 1-2-109 for all taxable years prior to the effective date of this act.

Approved March 23, 1983.

CHAPTER NO. 195

AN ACT TO EXTEND FOR 2 YEARS THE DEADLINE TO EXPEND OR ENCUMBER COAL AREA HIGHWAY IMPROVEMENT ACCOUNT FUNDS APPROPRIATED BEFORE JUNE 30, 1979; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Coal area highway improvement account — extension of deadline.** Any funds appropriated to the department of highways from the coal area highway improvement account before June 30, 1979,

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that are not expended or encumbered before the effective date of this act may be expended or encumbered until June 30, 1985.

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved March 23, 1983.

CHAPTER NO. 196

AN ACT TO ENSURE THAT THE TIME LIMIT FOR ISSUANCE OF A DECISION ON AN AIR QUALITY PERMIT APPLICATION DOES NOT RUN PRIOR TO ISSUANCE OF AN ENVIRONMENTAL IMPACT STATEMENT WHENEVER AN ENVIRONMENTAL IMPACT STATEMENT IS REQUIRED AND A STATE AGENCY OTHER THAN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IS THE LEAD AGENCY FOR PREPARATION OF THE STATEMENT; CORRECTING INTERNAL CITATIONS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(2) Not later than 180 days before construction begins of any machine, equipment, device, or facility which the board finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department and pay to the department a fee sufficient to cover:

(a) the reasonable costs of reviewing and acting upon the application for such permit; and

(b) the reasonable costs of implementing and enforcing the terms and conditions of such permit if the permit is granted (not including any court costs or other costs associated with any enforcement action). The fee shall be deposited in an earmarked revenue fund to be used by the department for administration of this section.

(3) Nothing in this section shall restrict the board's authority to adopt regulations providing for a single air quality permit system.

(4) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

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(5) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

(6) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and *(5)*. However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(7) *(a)* Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing *of the approval or denial of the application* within:

(i) 180 days of the receipt of a filed application, as defined in subsection *(6), if the department prepares the environmental impact statement; or*

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement.

(b) However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as defined in subsection *(6)*, of the approval or denial of the application. Notification of approval or denial may be served personally or by registered or certified mail on the applicant or his agent.

(8) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act.

(9) The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1983.

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CHAPTER NO. 197

AN ACT INCREASING THE AMOUNT OF MONEY A DISABLED TEACHER MAY EARN WITHOUT RECEIVING A REDUCTION IN HIS PENSION UNDER THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTION 19-4-904, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-904, MCA, is amended to read:

"19-4-904. Adjustment of allowance. (1) If the medical board reports and certifies to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation *or the difference between the median salary of those members retired during the preceding fiscal year and his retirement allowance, whichever is greater,* and if the retirement board concurs in such report, his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, is equal to his average final compensation *or the median salary of those members retired during the preceding fiscal year, whichever is greater.*

(2) If his earning capacity is changed later, his pension may be further modified, but the new pension may not exceed the pension originally granted or an amount which, when added to the amount earnable by the beneficiary, together with his annuity equals his average final compensation.

(3) A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired may not become a member of the retirement system while receiving a reduced benefit."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved March 23, 1983.

CHAPTER NO. 198

AN ACT TO PROVIDE THAT THE ACCUMULATED CONTRIBUTIONS OF A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM BE TRANSFERRED FROM THE ANNUITY SAVINGS FUND TO THE PENSION ACCUMULATION FUND, RATHER THAN THE ANNUITY RESERVE FUND, UPON HIS RETIREMENT; AMENDING SECTION 19-4-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-602, MCA, is amended to read:

"19-4-602. Annuity savings fund — member's contribution. The annuity savings fund is a fund in which the contributions from the

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members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner:

(1) Each employer shall deduct from the compensation of each active member on the payroll for each payroll period on and subsequent to the date on which the member became a member an amount equal to 6.187% of the member's earned compensation.

(2) The deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims whatsoever for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(3) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to any accumulated contributions which he has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

(4) The accumulated contributions of a member withdrawn by him or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund. Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings fund to the *pension accumulation* fund."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1983.

CHAPTER NO. 199

AN ACT TO REQUIRE CONCURRENCE BY A MAJORITY OF THE PROPERTY OWNERS AND OWNERS OF MORE THAN ONE-HALF OF THE PROPERTY IN A HISTORIC DISTRICT FOR NOMINATION OF THE DISTRICT TO THE NATIONAL REGISTER OF HISTORIC PLACES; AMENDING SECTION 22-3-431, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-431, MCA, is amended to read:

"22-3-431. Registration of heritage properties. (1) Any citizen of Montana may submit to the historic preservation officer for his consideration the necessary forms to nominate heritage properties to the register.

(2) For properties not owned by the state, the historic preservation officer may, upon approval by the preservation review board and *with the written concurrence of the owner or owners of the property*, nominate heritage properties to the register. *In the case of a historic district, the historic preservation officer may nominate the property only with the concurrence of:*

(a) a majority of the property owners of the district; and

(b) the owners of more than one-half of the property in the district.

(3) For lands owned by the state, the historic preservation officer may, upon approval by the preservation review board, nominate heritage properties to the register. The historic preservation officer shall notify the appropriate state agency and give public notice when any property is being considered for nomination. Unless state agency or public objections are submitted in writing within 30 days after notification, the historic preservation officer shall complete the nominations. When a state agency or any citizen of Montana submits written objections, the historic preservation officer shall consider the objections and may conduct a public hearing. If a hearing is held, it shall be commenced within 30 days after the final date for submission of written objections. Within 60 days after submission of the objections or after the public hearing, the historic preservation officer shall make a final decision on the proposed registration and prepare a statement responsive to the objections submitted."

Approved March 23, 1983.

CHAPTER NO. 200

AN ACT TO ALLOW CITIES OF ALL CLASSES TO ANNEX WHOLLY SURROUNDED LAND UNDER THE PROVISIONS OF TITLE 7, CHAPTER 2, PART 45, MCA; AMENDING SECTION 7-2-4501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4501, MCA, is amended to read:

"**7-2-4501. Annexation of wholly surrounded land.** A city may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement."

Approved March 23, 1983.

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CHAPTER NO. 201

AN ACT TO INCLUDE AS A MEMBER OF A FOSTER CARE REVIEW COMMITTEE THE FOSTER PARENT OF THE CHILD WHOSE CARE IS UNDER REVIEW; AMENDING SECTION 41-5-807, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-807, MCA, is amended to read:

"41-5-807. Foster care review committee. (1) In every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than *five* or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

(d) a representative of a local school district; *and*

(e) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or the youth court or if payment for care is made pursuant to 41-3-104 or 41-5-801(2), the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the youth court."

Approved March 23, 1983.

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CHAPTER NO. 202

AN ACT REQUIRING CAPITAL OR SURPLUS FUNDS FOR CREDIT LIFE AND DISABILITY INSURERS; DEFINING "RESIDENT DOMESTIC INSURER" AND "RESIDENT IN MONTANA" FOR THE PURPOSES OF THE INSURANCE CODE; AMENDING SECTIONS 33-1-201, 33-1-202, AND 33-2-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-201, MCA, is amended to read:

"33-1-201. Definitions — insurance in general. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) An "alien insurer" is one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one incorporated under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance.

(7) A "resident domestic insurer" is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are natural persons who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by natural persons who are residents of this state and all of the directors and officers of the insurer are residents of this state.

(8) "State", when used as to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) "Transact", with respect to insurance, includes any of the following:

(a) solicitation and inducement;

(b) preliminary negotiations;

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(c) effectuation of a contract of insurance;

(d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state."

Section 2. Section 33-1-202, MCA, is amended to read:

"33-1-202. Definitions — entities. For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) "Commissioner" means the commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity.

(4) "Resident of this state" means a person who has maintained a principal residence within the state of Montana for a period of not less than 2 consecutive years."

Section 3. Section 33-2-109, MCA, is amended to read:

"33-2-109. Capital or surplus funds required. (1) To qualify for authority to transact any one kind of insurance, as defined in 33-1-205 through 33-1-212, or combinations of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or surplus (if a mutual or foreign reciprocal insurer) in amount not less than as applicable under the schedule below, and shall possess when first so authorized such additional funds as surplus as required under 33-2-110:

Kind or kinds of insurance	Minimum capital or surplus required
Life	$200,000
Disability	200,000
Life and disability	300,000
Credit life and disability	*50,000*
Property	400,000
Marine	400,000
Casualty	
All lines except workers' compensation	400,000
All lines, including workers' compensation	600,000
Surety	500,000
Title	200,000
Multiple lines (two or more: property, marine, casualty, or surety)	800,000

(2) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers shall be governed by chapter 3, and domestic reciprocal insurers shall be governed by chapter 5.

(3) Capital and surplus requirements shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds are to be transacted in this state.

(4) A life insurer may also grant annuities without additional capital or additional surplus.

(5) For a credit life and disability insurer that is not a resident domestic insurer as defined in 33-1-201 and 33-1-202, the capital or surplus required by this section is an amount equal to four times the minimum capital or surplus required for credit life and disability pursuant to subsection (1)."

Approved March 23, 1983.

CHAPTER NO. 203

AN ACT TO ESTABLISH A UNIFORM TRANSBOUNDARY POLLUTION RECIPROCAL ACCESS ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This [act] may be cited as the "Uniform Transboundary Pollution Reciprocal Access Act".

Section 2. **Definitions.** As used in this [act], the following definitions apply:

(1) "Person" means an individual person, corporation, business trust, estate, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency, or any other legal entity.

(2) "Reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a province or territory of Canada, which has enacted this [act] or provides substantially equivalent access to its courts and administrative agencies.

Section 3. **Forum.** An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this state may be brought in this state.

Section 4. **Right to relief.** A person who suffers or is threatened with injury to his person or property in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this state has the same

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rights to relief with respect to the injury or threatened injury and may enforce those rights in this state as if the injury or threatened injury occurred in this state.

Section 5. **Applicable law.** The law to be applied in an action or other proceeding brought pursuant to this [act], including what constitutes "pollution", is the law of this state, excluding choice of law rules.

Section 6. **Equality of rights.** This [act] does not accord a person injured or threatened with injury in another jurisdiction any rights superior to those that the person would have if injured or threatened with injury in this state.

Section 7. **Right additional to other rights.** The right provided in this [act] is in addition to and not in derogation of any other rights.

Section 8. **Application of sovereign immunity.** The defense of sovereign immunity is applicable in any action or other proceeding brought pursuant to this [act] only to the extent that it would apply to a person injured or threatened with injury in this state.

Section 9. **Uniformity of application and construction.** This [act] shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this [act] among jurisdictions enacting it.

Approved March 23, 1983.

CHAPTER NO. 204

AN ACT CLARIFYING THE LAW REGARDING THE REVOCATION OF A DEFERRED OR SUSPENDED SENTENCE; REQUIRING THAT A PETITION TO REVOKE A DEFERRED OR SUSPENDED SENTENCE BE FILED DURING THE PERIOD OF DEFERRAL OR SUSPENSION; CONTINUING JURISDICTION TO REVOKE IF THE PERIOD OF DEFERRAL OR SUSPENSION EXPIRES AFTER THE PETITION IS FILED; AMENDING SECTION 46-18-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** *(1)* A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized in his discretion to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the department of institutions as provided by law or retain such jurisdiction with his court.

(2) A petition seeking revocation of a suspended sentence or imposition of a sentence previously deferred must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of jurisdiction to rule on the petition.

(3) Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing."

Section 2. **Applicability date.** Section 1 applies to any petition filed after the effective date of this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1983.

CHAPTER NO. 205

AN ACT REVISING THE MONTANA ELECTRONIC FUNDS TRANSFER ACT TO ELIMINATE COST RESTRICTIONS AND TO ALLOW SHARING OF OFF-PREMISES AUTOMATED TELLER MACHINES WITHIN THE STATE; AMENDING SECTIONS 32-6-203 AND 32-6-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-6-203, MCA, is amended to read:

"32-6-203. Institutional access requirements. (1) A satellite terminal used by a financial institution must be made available, on a nondiscriminatory basis, to all financial institutions or branches thereof located within the geographic area that may use each type of satellite terminal, as defined and outlined in 32-6-204, and that may want to participate in using this satellite terminal. In addition, each customer authorized by any financial institution may use the satellite terminal, with the limitations on the transactions imposed and outlined in 32-6-204. The charges required to be paid by any financial institution which utilizes the satellite terminal may not exceed a pro rata portion of the cost, determined in accordance with generally accepted accounting principles, and a reasonable return on the owner's equity. A financial institution may contract with a merchant for the operation of point-of-sale terminals. The contract shall specify the conditions upon which the merchant will make the point-of-sale terminal(s) available to customers of the financial institution and shall include terms covering connection charge, fees, format code, and security provisions. A point-of-sale terminal shall be available for use by all financial institutions upon such contractual terms as may be commercially reasonable.

(2) A financial institution may invest in, acquire, or hold shares in a corporation engaged solely in operating and owning satellite terminals. A financial institution may utilize, establish, or own, either alone or with one

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or more financial institutions, satellite terminals and related communication equipment associated with electronic funds transfers. Other business organizations may also own satellite terminals and lease or otherwise permit financial institutions to use the satellite terminals, provided these other businesses comply with the provisions of this chapter and agree to come under the supervision of the department. Such other business organizations may not engage in the business of a financial institution."

Section 2. Section 32-6-204, MCA, is amended to read:

"32-6-204. Geographical restrictions on certain satellite terminals. (1) If a financial institution is a bank, savings and loan association, or a credit union, it may engage in electronic funds transfers by means of an automated teller machine located within or not more than 3 miles beyond the municipality where its office is located or, if the financial institution is located outside any incorporated municipality, not more than 3 miles from its principal place of business.

(2) Any financial institution or its customers may use any automated teller machine located in this state, regardless of its ownership, to perform electronic funds transfers under terms and conditions mutually agreeable to the owner of the automated teller machine and the other user and pursuant to 32-6-203(1).

(3) The department may authorize the operation of an automatic teller machine which a financial institution uses only if such institution complies with this chapter and regulations adopted by the department.

(4) No out-of-state financial institution may establish a satellite terminal within the state or lease through other businesses satellite terminals within Montana. An out-of-state financial institution may not engage in electronic funds transfers within the state, except that a customer of an out-of-state financial institution may debit his account in an out-of-state financial institution at an in-state satellite terminal to pay for merchandise and services, provided the merchant credits an account in a financial institution whose principal place of business is located within the state.

(5) Point-of-sale terminals may be available to all customers authorized by in-state financial institutions for debiting accounts to pay for merchandise and services."

Approved March 23, 1983.

CHAPTER NO. 206

AN ACT TO REQUIRE THAT CERTAIN COOPERATIVES MUST HAVE MEMBERSHIP APPROVAL TO CREATE LONG-TERM OBLIGATIONS RELATED TO BONDED INDEBTEDNESS UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Long-term indebtedness — membership approval.** Before a cooperative may create or enter into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded

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indebtedness for financing directly or indirectly the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the cooperative's members for repayment of the obligation, the cooperative must receive approval from a majority of those members present and voting at the meeting. The approval must be obtained at a special meeting held for that purpose.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 35, chapter 18, and the provisions of Title 35, chapter 18, apply to section 1.

Approved March 23, 1983.

CHAPTER NO. 207

AN ACT TO AUTHORIZE THE STATE TO PAY FOR STATE EMPLOYEES' PARTICIPATION IN PART B OF MEDICARE, IN CERTAIN CASES, FROM THE STATE CONTRIBUTION FOR GROUP BENEFITS; INCORPORATING THE RELEVANT PROVISIONS OF THE FEDERAL TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982; AMENDING SECTION 2-18-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency as defined in 2-18-601 shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701 other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be $70 per month for the fiscal year ending June 30, 1982, and $80 per month for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. *A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.*

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Approved March 23, 1983.

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CHAPTER NO. 208

AN ACT TO REPEAL SECTION 20-20-302, MCA, RELATING TO SPECIAL QUALIFICATIONS FOR VOTING ON SCHOOL BOND ISSUES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 20-20-302, MCA, is repealed.

Approved March 23, 1983.

CHAPTER NO. 209

AN ACT CREATING A WIND ENERGY EASEMENT; PROVIDING THAT SOLAR AND WIND ENERGY EASEMENTS ARE SERVITUDES ATTACHED TO LAND; AMENDING SECTION 70-17-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-17-101, MCA, is amended to read:

"**70-17-101. Servitudes attached to land.** The following land burdens or servitudes upon land may be attached to other land as incidents or appurtenances and are then called easements:

(1) the right of pasture;

(2) the right of fishing;

(3) the right of taking game;

(4) the right-of-way;

(5) the right of taking water, wood, minerals, and other things;

(6) the right of transacting business upon land;

(7) the right of conducting lawful sports upon land;

(8) the right of receiving air, light, or heat from or over or discharging the same upon or over land;

(9) the right of receiving water from or discharging the same upon land;

(10) the right of flooding land;

(11) the right of having water flow without diminution or disturbance of any kind;

(12) the right of using a wall as a party wall;

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(13) the right of receiving more than natural support from adjacent land or things affixed thereto;

(14) the right of having the whole of a division fence maintained by a coterminous owner;

(15) the right of having public conveyances stopped or of stopping the same on land;

(16) the right of a seat in church;

(17) the right of burial;

(18) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land;

(19) the right of receiving sunlight or wind for recognized nonfossil forms of energy generation."

Section 2. **Wind energy easement.** (1) An easement obtained for the purpose of insuring the undisturbed flow of wind across the real property of another must be created in writing and is subject to the same conveyancing and instrument recording requirements as other easements on real property.

(2) An instrument creating a wind energy easement must include:

(a) a legal description of the real property benefited and burdened by the easement;

(b) a description of the dimensions of the easement sufficient to determine the horizontal space across and the vertical space above the burdened property that must remain unobstructed;

(c) the restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the windflow across and through the easement; and

(d) the terms or conditions, if any, under which the easement may be changed or terminated.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1983.

CHAPTER NO. 210

AN ACT ELIMINATING THE MANDATORY RETIREMENT AGE FOR A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM AND REQUIRING A TEACHER INITIALLY EMPLOYED BY THE MONTANA UNIVERSITY SYSTEM AFTER AGE 70 TO BECOME A MEMBER OF THE RETIREMENT SYSTEM; AMENDING SECTION 19-4-302, MCA; REPEALING SECTIONS 19-4-305 AND 19-4-803, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-302, MCA, is amended to read:

"**19-4-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who become eligible

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for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system;

(c) any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), or (c) of subsection (1);

(e) any person who has elected not to become a member of the retirement system. who has been continuously employed in a capacity prescribed by (a), (b), or (c) of subsection (1) since the time of such election, and who may thereafter elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike."

Section 2. **Repealer.** Sections 19-4-305 and 19-4-803, MCA, are repealed.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved March 23, 1983.

CHAPTER NO. 211

AN ACT AUTHORIZING EACH PARTY TO AN UNFAIR LABOR PRACTICE PROCEEDING TO DISQUALIFY WITHOUT CAUSE ONE HEARING EXAMINER DESIGNATED TO HEAR THE MATTER.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disqualification of hearing examiner.** Each party to an unfair labor practice proceeding has the right to disqualify, without cause, the hearing examiner designated by the board to hear the complaint. The right may be exercised only once by each party and must be

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exercised within 5 days from the time a party is notified by the board of the hearing examiner designated to hear the matter. The exercise of this right is in addition to any rights a party has to disqualify a hearing examiner under 2-4-611.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 39, chapter 31, and the provisions of Title 39, chapter 31, apply to section 1.

Approved March 23, 1983.

CHAPTER NO. 212

AN ACT TO RENAME MUNICIPAL SPRINKLING DISTRICTS TO MUNICIPAL MAINTENANCE DISTRICTS AND TO DEFINE THE SERVICES THAT MAY BE PROVIDED BY SUCH DISTRICTS; AMENDING SECTIONS 7-3-1332, 7-6-4222, 7-12-4401 THROUGH 7-12-4407, 7-12-4421, 7-12-4423, 7-12-4424 THROUGH 7-12-4429, AND 7-14-4107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-1332, MCA, is amended to read:

"7-3-1332. Public works and improvements. (1) Any local public work may be done or any local public works or improvements may be constructed, reconstructed, repaired, maintained, or operated, either by contract or directly by the municipality, as may be determined by the commission. Before authorizing that any local public works or improvements be directly constructed, reconstructed, repaired, maintained, or operated, detailed plans and estimates for each such work or improvement shall be submitted to the commission by the manager, and there shall be separate accounting for each work or improvement so executed.

(2) The municipality shall have the same power and authority to create special improvement districts and for like purposes and to create special lighting districts and *maintenance* districts for cities and towns *as provided by the laws of the state.*

(3) The director of public works shall be the engineer in charge of all such work, works, or improvements. The provisions of the general law of the state regarding special improvement districts, special lighting districts, and *maintenance* districts in cities and towns shall apply to and control the establishment under this part of special improvement districts, special lighting districts, and *maintenance* districts in and for the municipality and the procedure according to which any local public work or the construction, reconstruction, repair, maintenance, or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district, and such general law shall also apply to the manner of levying and collecting such assessments."

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Section 2. Section 7-6-4222, MCA, is amended to read:

"7-6-4222. Exclusion of certain items from estimate and budget. There may not be included in the estimate or in either the preliminary or final budget of a municipality any part of that cost which is to be paid by special assessments against the property within the districts or any part of the cost in *maintenance* districts which is to be defrayed by special assessments against the property in the *maintenance* districts."

Section 3. Section 7-12-4401, MCA, is amended to read:

"7-12-4401. Street maintenance district authorized — definition. *(1)* Whenever the council of any city or town desires to *create a district for the maintenance of* all or any part of the streets or avenues of its city or town as provided in this part, it shall provide by ordinance a method of doing said work and of paying for the same under the restrictions and regulations *provided in this part.*

(2) "Maintenance" as used in this part includes but is not limited to sprinkling, graveling, oiling, chip sealing, seal coating, overlaying, treating, general cleaning, sweeping, flushing, snow removal, and leaf and debris removal."

Section 4. Section 7-12-4402, MCA, is amended to read:

"7-12-4402. Creation of maintenance districts. A resolution *shall be adopted* dividing the whole or any part of *the* city or town into *maintenance* districts, to be known and designated by number. Said resolution shall plainly define the boundaries of the *district or* districts *and describe* the streets, alleys, and public places or any part thereof constituting the *district or* districts."

Section 5. Section 7-12-4403, MCA, is amended to read:

"7-12-4403. Alteration of maintenance districts. When once defined, *maintenance* districts *may* not be changed during the same calendar year but may be changed by resolution *in any succeeding year.*"

Section 6. Section 7-12-4404, MCA, is amended to read:

"7-12-4404. Manner of providing maintenance. The *maintenance* in districts so established may be done by contract or by forces employed by the city or town or by both, in such manner as the council may elect."

Section 7. Section 7-12-4405, MCA, is amended to read:

"7-12-4405. Improvements within maintenance districts — ordinance required. (1) Cities and towns are hereby authorized and empowered to prepare and improve streets, avenues, and alleys within the *maintenance* districts so that the *maintenance* will be of a durable and continuing benefit. The city or town council shall provide by ordinance a method or methods of doing said work and improvements.

(2) Cities and towns are authorized to maintain the work and improvements made under subsection (1).

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(3) At least *12* days must elapse between the day on which said proposed ordinance is introduced and the day on which final action thereon is taken."

Section 8. Section 7-12-4406, MCA, is amended to read:

"7-12-4406. Notice of ordinance for improvements. The city or town clerk must give notice of the introduction of such proposed ordinance and of the time it will be up for *final adoption*:

(1) by publication three times in a daily newspaper or in a weekly newspaper for two successive issues in such city or town; or

(2) if there be no such newspaper, then by posting for at least 10 days in three public places in each of the wards of said city or town."

Section 9. Section 7-12-4407, MCA, is amended to read:

"7-12-4407. Protest against ordinance for improvements. If 40% or more of the abutting property owners protest in writing to said city or town council against the passage of said proposed ordinance, then no further action shall be taken *upon the proposed district for 1 year.*"

Section 10. Section 7-12-4421, MCA, is amended to read:

"7-12-4421. Choice in manner of making assessments. The assessments for the costs and expenses of *maintaining* streets, *alleys, and public places* shall be made against all of the property embraced within each *maintenance* district by one of the three methods provided in 7-12-4422 through 7-12-4424."

Section 11. Section 7-12-4423, MCA, is amended to read:

"7-12-4423. Assessment of costs — frontage option. Each lot or parcel of land within such district abutting upon *a* street upon which *maintenance* is done shall be assessed for that part of the whole cost which its street frontage bears to the street frontage of the entire district."

Section 12. Section 7-12-4424, MCA, is amended to read:

"7-12-4424. Assessment of costs — combined area-frontage option. A portion of the total cost to be assessed in each district may be assessed against the several lots or parcels of land within the district by the method provided in *7-12-4423* on a frontage basis and the remainder of such cost by the method provided in *7-12-4422* on an area basis. The proportion to be assessed in each district by each such method shall be determined and fixed by the city or town council."

Section 13. Section 7-12-4425, MCA, is amended to read:

"7-12-4425. Resolution for assessment of costs of maintenance. (1) *The city council* shall estimate, as near as practicable, the cost of *maintenance* in *each* established *district annually, not later than* the *second* Monday in *August. The council* shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to not less than 75% of the entire cost of said work.

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(2) The resolution levying the assessment to defray the cost of *maintenance* shall contain *or refer to* a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof if known, and the amount levied thereon set opposite.

(3) Such resolution shall be kept on file in the office of the city clerk."

Section 14. Section 7-12-4426, MCA, is amended to read:

"7-12-4426. Notice of resolution for assessment. (1) A notice, signed by the city clerk, stating that the resolution levying a special assessment to defray the cost of *maintenance* in the *district or* districts is on file in his office and subject to inspection for a period of 5 days, shall be published at least once in a newspaper published in the city or town.

(2) The notice shall state the time and place at which objections to the final adoption of the resolution will be heard by the council. The time for the hearing shall be not less than 5 days after the publication of the notice."

Section 15. Section 7-12-4427, MCA, is amended to read:

"7-12-4427. Hearing on resolution for assessment of costs. (1) At the time so set, the council shall meet and hear all objections which may be made to such assessment or any part thereof and may adjourn from time to time for that purpose and may by resolution modify such assessment in whole or in part.

(2) A copy of *the* resolution, certified by the city clerk, must be delivered to the *financial officer*, and *the assessments* shall be placed upon the tax roll and collected in the same manner as other taxes."

Section 16. Section 7-12-4428, MCA, is amended to read:

"7-12-4428. Assessment of costs of improvements and maintenance of improvements. Cities and towns are authorized to assess the cost of the work, improvements, and maintenance authorized by 7-12-4405 against the property in *maintenance* districts in the manner and as provided in 7-12-4421 through 7-12-4424 to meet the payments required to be made each year."

Section 17. Section 7-12-4429, MCA, is amended to read:

"7-12-4429. Financial assistance from the United States. Cities and towns are authorized to:

(1) enter into suitable agreements with the United States of America for loans of money and for receiving financial assistance to do the work and improvements contemplated by 7-12-4405; and

(2) provide for the repayment thereof by yearly payments from funds derived from districts created under 7-12-4405, apportioned over a period of time not exceeding 20 years."

Section 18. Section 7-14-4107, MCA, is amended to read:

"7-14-4107. Maintenance of trafficways. The city or town council *may* provide for the *maintenance* of the streets, alleys, and public

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places of the city or town and *may* fix rates to defray the cost of said work *as provided in Title 7, chapter 12, part 44.*"

Section 19. **Effective date.** This act is effective July 1, 1983.

Approved March 23, 1983.

CHAPTER NO. 213

AN ACT CHANGING THE TIME WHEN THE FINAL ORDER CONCERNING AN UNFAIR LABOR COMPLAINT MUST BE ISSUED FROM 5 MONTHS AFTER A COMPLAINT IS SUBMITTED TO THE HEARING OFFICER TO 5 MONTHS AFTER FINAL BRIEFS ARE SUBMITTED TO THE HEARING OFFICER; AMENDING SECTION 39-31-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-406, MCA, is amended to read:

"**39-31-406. Hearing on complaint — findings — order.** (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue

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and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended order shall become the order of the board. The board shall issue a final order within 5 months after *final briefs are* submitted to the hearing officer. *If briefs are to be submitted, but either or both of the parties fail to submit their brief on the date set by the hearing examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing.*"

Approved March 23, 1983.

CHAPTER NO. 214

AN ACT TO PROVIDE THAT A SPECIAL ELECTION ON AN ALTERNATIVE FORM OF GOVERNMENT MAY NOT BE HELD LESS THAN 40 DAYS AFTER THE ELECTION IS CALLED; AMENDING SECTION 7-3-149, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-149, MCA, is amended to read:

"**7-3-149. Election on alternative form.** (1) The governing body shall call a special election on the question of an alternative form of government to be held *at least 40 days after the call and* within 120 days of the date of filing with the records administrator under 7-3-146. The special election may be held in *conjunction* with any other election. The records administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question shall be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and requires a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form."

Approved March 23, 1983.

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CHAPTER NO. 215

AN ACT TO AMEND SECTION 18-8-103, MCA, TO BROADEN THE EXEMPTION OF REGISTERED PROFESSIONAL ENGINEERS, SURVEYORS, REAL ESTATE APPRAISERS, OR REGISTERED ARCHITECTS FROM THE LAWS REGULATING PRIVATE CONSULTANTS EMPLOYED BY STATE AGENCIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-8-103, MCA, is amended to read:

"18-8-103. Exemptions. This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health-care providers; and

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1983.

CHAPTER NO. 216

AN ACT INCREASING COMPENSATION OF COUNTY TAX APPEAL BOARD MEMBERS; AMENDING SECTION 15-15-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-15-101, MCA, is amended to read:

"15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They shall receive compensation of *$45* a day and travel expenses as provided for in 2-18-501 through 2-18-503, as amended, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment

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for the county tax appeal boards shall be furnished by the county. All other incidental expenses shall be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but, except as provided in 15-2-201, not later than 60 days after the department of revenue or its agent:

(a) has mailed notice of classification and appraisal to all property owners as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners.

(3) In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county or, if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board.

(4) Challenges to a department of revenue rule governing the assessment of property or to an assessment procedure shall apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-2-307 through 15-2-310."

Section 2. **Effective date.** This act is effective on July 1, 1983.

Approved March 23, 1983.

CHAPTER NO. 217

AN ACT TO DELETE THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION SIGN PLEDGED SECURITY AGREEMENTS INVOLVING DEPOSITS OF LOCAL GOVERNMENT FUNDS; AMENDING SECTION 7-6-207, MCA; REPEALING SECTION 7-6-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-207, MCA, is amended to read:

"7-6-207. Deposit security. (1) The local governing body may require security only for that portion of the deposits which is not guaranteed or insured according to law and, as to such unguaranteed or uninsured portion, only to the extent of 50% of such deposits. The security

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shall consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, such securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer or town clerk *and* his successors. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It is the duty of the appropriate governing body, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of the acceptance and approval upon the record of their proceedings, and the bonds and securities shall be reapproved at least quarter-annually thereafter."

Section 2. **Repealer.** Section 7-6-209, MCA, is repealed.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1983.

CHAPTER NO. 218

AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TAKE ENFORCEMENT ACTION BASED UPON VIOLATION OF AN AIR QUALITY PERMIT; AMENDING SECTIONS 75-2-401, 75-2-403, 75-2-412, AND 75-2-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-401, MCA, is amended to read:

"75-2-401. Enforcement. (1) When the department believes that a violation of this chapter, a rule made under *this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter* has occurred, it may cause written notice to be served personally or by registered or certified mail on the alleged violator or his agent. The notice shall specify the provision of this chapter, or *the* rule, *or permit condition or limitation* alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. An order issued as part of a notice or after a hearing may prescribe the date by which the violation

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shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

(4) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

Section 2. Section 75-2-403, MCA, is amended to read:

"75-2-403. Inspections. (1) The department, for the purpose of ascertaining the state of compliance with this chapter *or* rules *and permits* in force under it, may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed.

(2) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials when the department requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report stating all facts found which relate to compliance status."

Section 3. Section 75-2-412, MCA, is amended to read:

"75-2-412. Criminal penalties — injunction preserved. (1) A person who violates this chapter or a rule, order, *or permit* made *or issued* under it, other than 75-2-105, is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense.

(2) A person who willfully violates 75-2-105 is guilty of an offense and subject to a fine not to exceed $1,000.

(3) Fines collected shall be deposited to the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of *a rule, order, or permit* made *or issued* under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state any enforcement proceedings."

Section 4. Section 75-2-413, MCA, is amended to read:

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"75-2-413. Civil penalties — out-of-state litigants — effect of action. (1) Any person who violates any provision of this chapter or any rule enforced thereunder or any order *or permit* made *or issued* pursuant thereto and after notice thereof has been given by the department shall be subject to a civil penalty not to exceed $10,000. Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) of this section is not a bar to enforcement of this chapter or of *a rule, order, or permit* made *or issued* under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or *a rule, order, or permit* made *or issued* under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) Moneys collected hereunder shall be deposited in the state general fund."

Approved March 23, 1983.

CHAPTER NO. 219

AN ACT TO ALLOW CREDIT UNIONS, WITH PRIOR APPROVAL OF THE DIRECTOR OF THE DEPARTMENT OF COMMERCE, TO USE REGULAR RESERVES TO MEET LOSSES FROM THE SALE OF INVESTMENTS OR SECURITIES; AMENDING SECTION 32-3-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-703, MCA, is amended to read:

"32-3-703. Use of regular reserve. The regular reserve shall belong to the credit union and shall be used to meet losses *including, with prior approval of the director of the department of commerce, losses from the sale of investments or securities. The regular reserve may not be used to meet losses* resulting from an excess of expenses over income and *may* not be distributed except on liquidation of the credit union or in accordance with a plan approved by the director of the department of commerce."

Approved March 23, 1983.

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CHAPTER NO. 220

AN ACT PROVIDING THAT THE APPLICATION FEE FOR ADMISSION TO THE STATE BAR AND THE FEE FOR THE BAR EXAMINATION BE COMMENSURATE WITH COSTS AS DETERMINED BY THE SUPREME COURT; AMENDING SECTION 37-61-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-61-205, MCA, is amended to read:

"37-61-205. Application and examination fees. (1) Every applicant for admission to the bar must pay to the clerk of the supreme court at the time he files his application for admission *a fee commensurate with the cost of processing the application as determined by the supreme court.*

(2) In addition to the fee provided for in subsection (1), the supreme court may charge an examination fee commensurate with the cost of administering the bar examination.

(3) All money collected from fees herein provided for shall be deposited with the state treasurer by the clerk of the supreme court and placed in the general fund."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1983.

CHAPTER NO. 221

AN ACT TO ALLOW A LANDLORD TO TERMINATE A TENANCY ON 3 DAYS' WRITTEN NOTICE IF THE TENANT DAMAGES OR REMOVES PART OF THE PREMISES; AMENDING SECTION 70-24-422, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-422, MCA, is amended to read:

"70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

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(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the breach under the provisions of 70-24-321(2).

(4) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. If the tenant's noncompliance is purposeful, the landlord may recover treble damages."

Approved March 23, 1983.

CHAPTER NO. 222

AN ACT TO GENERALLY REVISE AND CLARIFY SECTION 15-31-544, MCA, RELATING TO ACTION ON A FALSE OR FRAUDULENT INCOME TAX RETURN; AMENDING SECTIONS 15-31-509 AND 15-31-544, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-544, MCA, is amended to read:

"15-31-544. Action on false or fraudulent return. Whenever a return is required to be filed and the taxpayer *files a fraudulent return or* fails to file the return, the department *may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment.*"

Section 2. Section 15-31-509, MCA, is amended to read:

"15-31-509. Periods of limitation. (1) Except as otherwise provided in this section and in *15-31-544*, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an

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assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section shall last:

(i) only so long as the suspension of the federal statute of limitation; or

(ii) until 1 year after any federal changes have become final or any amended federal return is filed as a result of such suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by 15-31-506 until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event no claim is filed shall automatically be so extended."

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Applicability.** This act applies to tax years beginning after December 31, 1982, and to all prior tax years for which the liability for taxes has not been discharged by statute.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 23, 1983.

CHAPTER NO. 223

AN ACT TO CLARIFY THE DETERMINATION OF THE RATE OF TUITION FOR ELEMENTARY SCHOOL PUPILS; AMENDING SECTION 20-5-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-305, MCA, is amended to read:

"20-5-305. Elementary tuition rates. Whenever a pupil of an elementary district has been granted approval to attend a school outside of

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the district in which he resides, under the provisions of 20-5-301 or 20-5-302, such district shall pay tuition to the elementary district where the pupil attends school on the basis of the rate of tuition determined by the attended district. The rate of tuition shall be determined by:

(1) totaling the actual expenditures from the district general fund, *the* debt service fund, *and, if the pupil is a resident of another county, the retirement fund*;

(2) dividing the amount determined in subsection (1) above by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(3) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (2) above."

Approved March 23, 1983.

CHAPTER NO. 224

AN ACT ALLOWING A TEACHER OR SPECIALIST WHO APPLIES FOR CERTIFICATION AFTER MARCH 1 TO HAVE THE PERIOD OF VALIDITY OF THE CERTIFICATE BEGIN ON JULY 1 FOLLOWING THE DATE OF APPLICATION; AMENDING SECTION 20-4-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-108, MCA, is amended to read:

"20-4-108. Term of teacher and specialist certificates — renewal. (1) Any teacher or specialist certificate issued by the superintendent of public instruction shall bear the dates of issue and validity and shall be valid for a term of 5 school fiscal years, except that class 5 provisional certificates shall be valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate shall begin on July 1 immediately preceding the date of issue, *except that a teacher or specialist who applies for certification after March 1 may, upon request, have the period of validity of the certificate begin on July 1 following the date of application.*

(2) Teacher and specialist certificates shall be renewed for similar periods of time on the basis of the board of public education policies for teacher and specialist certification renewal."

Approved March 23, 1983.

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CHAPTER NO. 225

AN ACT REVISING THE PENALTY FOR FAILURE OF A COUNTY ASSESSOR TO MAKE AN ANNUAL STATEMENT TO THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-1-105 AND 15-8-706, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-706, MCA, is amended to read:

"15-8-706. Statement by agent to the department. (1) On the second Monday in July in each year, the agent of the department of revenue in each county must transmit to the department a statement showing:

(a) the several kinds of personal property;

(b) the average and total value of each kind;

(c) the number of livestock, number of bushels of grain, number of pounds or tons of any article sold by the pound or ton;

(d) when practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

(2) An agent of the department who purposely or negligently fails to perform his duty under this section or a deputy or member of the agent's staff delegated such duty who purposely or negligently fails to perform such duty is guilty of official misconduct under 45-7-401."

Section 2. Section 15-1-105, MCA, is amended to read:

"15-1-105. Fines and forfeitures to county. *All* fines, forfeitures, and penalties incurred by a violation of any of the provisions of the state tax laws must be paid into the treasury for the use of the county where the person against whom the recovery is had resides."

Approved March 23, 1983.

CHAPTER NO. 226

AN ACT TO REQUIRE A QUARTERLY REPORT OF GROSS YIELD FOR PURPOSES OF THE RESOURCE INDEMNITY TRUST TAX; AMENDING SECTIONS 15-38-105 THROUGH 15-38-107, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-105, MCA, is amended to read:

"15-38-105. Report of gross yield from mines. A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or

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other place or source shall make out a *quarterly* statement of gross yield of the mineral from each mine owned or worked by that person during the *quarter.* This form shall be in the form prescribed by the department and shall be signed by the person or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any, and shall be delivered to the department on or before *the 60th day following the end of the calendar quarter.* The statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine;

(2) the description and location of the mine;

(3) the quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other commercially valuable constituents of the ores or mineral products or deposits yielded to the person engaged in mining measured by standard units of measurement;

(5) the gross yield or value in dollars and cents."

Section 2. Section 15-38-106, MCA, is amended to read:

"15-38-106. Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter shall be paid by each person to which the tax applies, *on or before March 1, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time the statement of yield for the last calendar quarter is filed with the department.*

(2) The department shall deposit the proceeds of the tax in the resource indemnity trust account of the trust and legacy fund. Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(3) The department shall examine each of the *four quarterly* statements and compute the taxes thereon, and the amount computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess shall be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 3. Section 15-38-107, MCA, is amended to read:

"15-38-107. Procedure in case of failure to file statement. (1) If any person fails, refuses, or neglects to make and file a statement and

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return it within the time prescribed, the department shall immediately after such time has expired determine, as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the *gross yield of the mineral* of such person from such business during the calendar *quarter* immediately preceding the *quarter* in which the *statement is to be filed* and shall fix the amount of the tax *that would be* due to the state *if the tax were paid on a quarterly basis* from such person for such calendar *quarter* and shall add to the amount of such tax a penalty of *$25 or 2%, whichever is greater.*

(2) If any person fails, refuses, or neglects to pay the tax when due, the department shall immediately determine, as nearly as may be possible from any information which the department may be able to obtain, the total gross value of product of the person from the business during the year for which the tax is due and shall fix the amount of tax due to the state and shall add to the amount a penalty of 8% plus interest at the rate of 1% a month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.

(3) The department shall mail to the person *failing* to file *a quarterly* statement *or* pay any tax a letter setting forth the amount of tax, penalty, and interest due. The letter shall advise that if payment is not received, a warrant for distraint may be filed.

(4) Penalties may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-38-105 *or the failure to pay the tax required by 15-38-106* is provided to the department."

Section 4. **Applicability.** This act is applicable to taxable years beginning after December 31, 1983.

Approved March 24, 1983.

CHAPTER NO. 227

AN ACT TO CHANGE THE METALLIFEROUS MINES LICENSE TAX ANNUAL REPORTING REQUIREMENT TO A QUARTERLY REPORTING REQUIREMENT; REQUIRING PAYMENT OF THE TAX TO ACCOMPANY THE FILING OF THE MARCH 1 RETURN; AMENDING SECTIONS 15-37-102, 15-37-104 THROUGH 15-37-106, AND 15-37-108, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-37-102, MCA, is amended to read:

"15-37-102. Gross value of metal mine yield — computation. *The "quarterly reporting date", as used in this part, means the last day*

of the calendar quarter. The "*quarterly* gross value of product", as used in this part, *means* the market value of all merchantable metals or precious and semiprecious gems and stones extracted or produced each *calendar quarter* from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction, or treatment of any such ores. Whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the *quarterly* gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby as shown by the gross smelter returns of such metals or mineral product in dollars and cents without any deductions for costs of smelting, reduction, or treatment or otherwise, based upon the average quotations of the price of such metals or mineral products in the city of New York, as evidenced by some established authority or market report, giving the market reports during the calendar *quarter for which a report is being made.* Should there be no quotation covering any particular product, the department of revenue shall fix the value of such gross product or such portion thereof in such a manner as may seem equitable."

Section 2. Section 15-37-104, MCA, is amended to read:

"15-37-104. Mine operator's statement of gross value — reports and sampling. (1) Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced must, not later than *60 days following the quarterly reporting date of each quarter* when engaged in or carrying on any such business, work, or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar *quarter* immediately preceding. *If good cause is shown, the department may grant a reasonable extension of the time for filing statements. The* statement shall be in the form prescribed by the department of revenue and shall show the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which such ore or concentrate has been shipped or sold during the period covered by the statement and such other information as the department may require;

(e) the gross yield of such ores, concentrates, mineral products, or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of said ores, concentrates, or mineral products

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or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the *quarterly* gross value of product in dollars and cents.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore or concentrate is shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property.

(4) If the quarterly statement of gross value described herein is not filed with the department within 60 days following the calendar quarter ending, a penalty shall be assessed. The penalty shall be the greater of $25 or 2% of the tax that would be due under [this act] if collected quarterly. If good cause is shown, the department may waive the penalty."

Section 3. Section 15-37-105, MCA, is amended to read:

"**15-37-105. Computation and payment of tax.** (1) *The tax due under this chapter is computed according to 15-37-103 and is due and payable on or before March 1 of each year for the products produced in the preceding calendar year. The tax due under this chapter becomes delinquent as of midnight on March 1 of the year immediately following the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest at a rate of 1% a month or any part thereof.*

(2) If any such person has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the department shall compute the gross value of such portion of said mine's product so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the department shall fix the value of such gross product or such portion thereof as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable."

Section 4. Section 15-37-106, MCA, is amended to read:

"**15-37-106. Procedure in case of failure to file statements.** If any person shall fail, refuse, or neglect to make and file *all required quarterly statements of gross yield for a production year on or before March 1 of the year immediately following the production year*, the department of revenue shall, immediately after such time has expired, ascertain and

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determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information which the department may be able to obtain the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid and shall make and file a statement showing the amount of such gross value of product and shall ascertain, determine, compute, and assess the amount of the license taxes due from and to be paid by such person and shall immediately give notice to such person in the same manner as though such statement had been filed within time and shall proceed to collect such license tax, adding thereto and collecting therewith if the same is delinquent the same penalty and interest as provided for herein for other delinquencies."

Section 5. Section 15-37-108, MCA, is amended to read:

"**15-37-108. Delinquent taxes — penalty.** All license taxes assessed under the provisions of this part shall become delinquent if not paid *on or before midnight of March 1 of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax* a penalty of *8%. The* whole amount of license tax, *together* with penalty, shall bear interest at the rate of 1% per month or fraction thereof. *Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the 8% penalty if it determines that a reasonable cause exists for failure to pay the tax on or before March 1 of the year immediately following the production year.*"

Section 6. **Applicability.** This act is applicable to tax years beginning after December 31, 1983.

Approved March 24, 1983.

CHAPTER NO. 228

AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP AND MAINTAIN A LAND MOBILE PUBLIC SAFETY RADIO FREQUENCY UTILIZATION PLAN; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative recognition — FCC contact agency.** The legislature recognizes that prior to issuing a land mobile public safety radio license, the federal communications commission (FCC) attempts to coordinate the license application with other licenses to minimize the interference caused by the overlapping of frequencies on the same channel or an adjacent channel. The department of administration is the contact agency within the state of Montana to assist the FCC in the coordination of land mobile public safety radio frequencies.

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Section 2. **Land mobile public safety radio frequency utilization plan.** (1) In order to assist the federal communications commission in the coordination of land mobile public safety radio frequencies, the department of administration shall develop and maintain a land mobile public safety radio frequency utilization plan.

(2) The plan must include but is not limited to:

(a) frequency usage and allocation standards relating to radio antenna height and power, types of use intended for the requested frequency, and other technical features of proposed radio systems;

(b) technical standards applying to types of radio usage;

(c) policies and procedures for the management of statewide mutual aid frequencies.

Section 3. **Rulemaking authority.** (1) The department of administration may adopt rules to implement the land mobile public safety radio frequency utilization plan provided for in [section 2].

(2) The department shall obtain input from all state and local users of public safety radio services.

Section 4. **Effective date.** This act is effective July 1, 1983.

Approved March 24, 1983.

CHAPTER NO. 229

AN ACT REQUIRING A FISCAL NOTE ON LEGISLATION AFFECTING LOCAL GOVERNMENTS; AMENDING SECTIONS 5-4-201 AND 5-4-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-4-201, MCA, is amended to read:

"**5-4-201. Requirement of fiscal notes with committee reports.** All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state *or of a county or municipality*, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction."

Section 2. Section 5-4-203, MCA, is amended to read:

"**5-4-203. Budget director to prepare note.** The budget director, in cooperation with the *state or local* agencies *or officials or organizations representing local agencies or officials* affected by the bill, is responsible for the preparation of the fiscal note and shall return same within 6 days.

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The director may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval."

Approved March 24, 1983.

CHAPTER NO. 230

AN ACT TO CLARIFY THE GENERAL POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AND GIVING THE DEPARTMENT THE AUTHORITY TO ADOPT RULES TO IMPLEMENT STATE AND FEDERAL HEALTH PROGRAMS FOR MATERNAL AND CHILD HEALTH AND FOR HANDICAPPED CHILDREN; AMENDING SECTION 50-1-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1-202, MCA, is amended to read:

"50-1-202. General powers and duties. The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop, *adopt,* and administer *rules setting standards for participation in and operation of programs* to protect the health of mothers and children, *which rules may include programs for nutrition, family planning*

services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(10) conduct health education programs;

(11) provide consultation to school and local community health nurses in the performance of their duties;

(12) consult with the superintendent of public instruction on health measures for schools;

(13) develop, *adopt*, and administer *rules setting standards for* a program *to provide* services to handicapped children, including *standards for:*

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) after-care and related services; *and*

(d) eligibility;

(14) provide consultation to local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) adopt rules imposing fees for the tests and services performed by the laboratory of the department, *except those fees relating to water analysis, which are imposed by the board pursuant to 75-6-103(2)(b). The* department may *not* establish *fees exceeding* the costs incurred in performing tests and services. All fees shall be deposited in the general fund.

(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(20) adopt and enforce rules regarding the transportation of dead human bodies."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 24, 1983.

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CHAPTER NO. 231

AN ACT TO PROVIDE CRITERIA FOR ADMISSIONS TO THE MONTANA CENTER FOR THE AGED; REVISING THE TRANSFER AND DISCHARGE PROCEDURE; AMENDING SECTIONS 53-21-411 AND 53-21-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-411, MCA, is amended to read:

"53-21-411. Location and function of center. The institution located at Lewistown is the Montana center for the aged. The primary function of the center is the care and treatment of persons *55 years of age or older. Priority must be given to patients referred from* Warm Springs state hospital *or Galen state hospital.*"

Section 2. Section 53-21-413, MCA, is amended to read:

"53-21-413. Discharge or convalescent release of patients. Upon the request of the superintendent of the center, the *department of institutions* may authorize the discharge or release on convalescent status of a patient residing at the center under the same restrictions provided by law for the discharge and release on convalescent status of patients of the state hospital."

Section 3. **Admissions.** Appropriate admissions to the Montana center for the aged are persons unable to maintain themselves in their homes or communities due to mild psychiatric impairments associated with the aging process but who do not require the intensity of treatment available at Warm Springs or Galen state hospital.

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 53, chapter 21, part 4, and the provisions of Title 53, chapter 21, part 4, apply to section 3.

Approved March 24, 1983.

CHAPTER NO. 232

AN ACT TO INCLUDE COGENERATION IN THE DEFINITION OF A QUALIFYING SMALL POWER PRODUCTION FACILITY; AMENDING SECTIONS 69-3-601, 69-3-602, AND 69-3-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-601, MCA, is amended to read:

"69-3-601. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission.

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(2) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted to do business in Montana.

(3) "Utility" means any public utility supplying electricity and regulated by the commission.

(4) "Qualifying small power production facility" means a facility that:

(a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other renewable resource, or any combination of those sources; *or*

(b) produces electricity and useful forms of thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes through the sequential use of energy known as cogeneration; and

(c) has a power production capacity that together with any other facilities located at the same site is not greater than 80 megawatts; and

(d) is owned by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility."

Section 2. Section 69-3-602, MCA, is amended to read:

"69-3-602. Generation and sale of electricity by qualifying small power production facility. (1) A qualifying small power production facility may generate electricity from the sources described in *subsections (4)(a) and (4)(b) of* 69-3-601 and may contract for the sale of that electricity with a utility.

(2) A qualifying small power production facility may generate electricity from the sources described in *subsections (4)(a) and (4)(b) of* 69-3-601 and may contract for the sale of that electricity with an electric cooperative under terms and conditions mutually agreed upon between the parties and in compliance with the rates and regulations established by the Public Utility Regulatory Policies Act."

Section 3. Section 69-3-604, MCA, is amended to read:

"69-3-604. Standards for determination of rates and conditions. (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through *(5)*.

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility shall be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility shall be established with consideration of the availability and reliability of the electricity produced.

(4) The commission may set these rates by use of any of the following methods:

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(a) the avoided cost over the term of the contract;

(b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or

(c) any other method that will promote the development of qualifying small power production facilities.

(5) The commission may adopt rules further defining the criteria for qualifying small power production facilities, their cost-effectiveness, and other standards."

Approved March 24, 1983.

CHAPTER NO. 233

AN ACT ELIMINATING THE SWAN RIVER YOUTH FOREST CAMP AS A PLACE OF COMMITMENT UNDER THE YOUTH COURT ACT AND PROVIDING FOR EVALUATION OF THOSE COMMITTED TO THE CAMP; AMENDING SECTIONS 41-5-103, 41-5-523, AND 53-30-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

"**41-5-103. Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

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(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in 41-3-102.

(15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City and Mountain View school in Helena.

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(18) "Shelter care" means the temporary care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary care of youth in physically restricting facilities.

(20) "District youth guidance home" means a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state youth correctional facilities, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision.

(21) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding."

Section 2. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth, consistent with subsection (1)(d) of this section;

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths.

(3) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(4) Any order of the court may be modified at any time.

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(5) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name Address Occupation

.....

.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge"

Section 3. Section 53-30-212, MCA, is amended to read:

"53-30-212. Commutation of sentence to state prison and transfer of prisoner to juvenile correctional facility. (1) Upon the application of a person under 21 years of age who has been sentenced to the state prison or upon the application of his parents or guardian, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the sentence by committing such person to the department until he is 21 years of age or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department indicates that he is not a proper person to reside at one of the department's juvenile facilities, the governor, after consulting with the department and with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the department's juvenile facilities or while a refugee from one of the department's juvenile facilities shall not be considered as a part of his original sentence.

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(3) Upon recommendation of the warden and with the approval of the department, a person under 21 years of age who has been sentenced to the state prison may be transferred to any juvenile facility under the jurisdiction and control of the department.

(4) Upon recommendation of the warden and approval of a person sentenced to the state prison or application of a person sentenced to the state prison and approval of the warden and with the approval of the department, such person sentenced to the state prison who is 25 years of age or younger may be transferred to the Swan River youth forest camp. *Prior to departmental approval of the transfer, the person must undergo an evaluation by the department to determine his suitability for transfer to the camp. The results of the evaluation must include a finding that a minimum security facility is an appropriate placement for such person or the transfer shall be denied. If the person is transferred, he* shall be under the supervision and control of the facility to which he is transferred.

(5) If such person's behavior after transfer to such juvenile facility indicates he might be released on parole or his sentence be commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department, may make an appropriate recommendation to the state board of pardons and the governor, who may, in their discretion, parole such person or commute his sentence.

(6) If such person's behavior after transfer to a juvenile facility indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent and with the approval of the department, such person shall be returned to the state prison to serve out his unexpired term."

Approved March 24, 1983.

CHAPTER NO. 234

AN ACT REQUIRING THE COUNTY TREASURER OF EACH COUNTY TO GIVE THE TRUSTEES OF EACH SCHOOL DISTRICT A MONTHLY, RATHER THAN QUARTERLY, REPORT SHOWING THE RECEIPTS, EXPENDITURES, AND CASH BALANCES FOR EACH BUDGETED FUND OF THE DISTRICT; AMENDING SECTION 20-9-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are entitled to a portion of such money according to the apportionments ordered by the county superintendent. A separate accounting shall

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be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the county's high school transportation obligation;

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana;

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs;

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs; and

(g) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion such county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included in the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in the sum of money in all funds of the district to make payment of such warrant. Redemption of registered warrants shall be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

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(9) invest the money of any district as directed by the trustees of the district;

(10) give *each month* to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance; and

(11) remit promptly to the state treasurer receipts for the county tax for a postsecondary vocational-technical center when levied by the board of county commissioners."

Approved March 24, 1983.

CHAPTER NO. 235

AN ACT TO PROVIDE FOR THE GRANTING OF PAROLE BY THE BOARD OF PARDONS IF THE POPULATION AT THE MONTANA STATE PRISON OR THE WOMEN'S CORRECTION CENTER EXCEEDS DESIGN CAPACITY FOR MORE THAN 30 DAYS; AMENDING SECTION 46-23-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for parole. (1) Subject to the following restrictions, the board shall release on parole by appropriate order any person confined in the Montana state prison *or the women's correction center*, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to *the prisoner* or to the community:

(a) No convict serving a time sentence may be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 ½ years.

(b) No convict serving a life sentence may be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

(2) A parole shall be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(3) If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of 545

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by 215 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility date provided for in subsection (1).

(4) Regardless of length of sentence, if the conditions of parole eligibility are met within the intitial 12 months of incarceration at Montana State Prison, the provisions of subsection (3) do not apply."

Section 2. **Termination date.** The provisions enacted in (3) and (4) of section 1 of this act terminate on July 1, 1985.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 24, 1983.

CHAPTER NO. 236

AN ACT TO INSURE THAT THE FINAL PAYMENT OF STATE EQUALIZATION AID WILL BE WITHHELD WHEN AN ERRONEOUS CLAIM IS RECEIVED FROM A COUNTY SUPERINTENDENT OF SCHOOLS; AMENDING SECTION 20-9-344, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-344, MCA, is amended to read:

"**20-9-344. Purpose of state equalization aid and duties of the board of public education for distribution.** (1) The money available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law;

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(b) have the power to require such reports from the county superintendents, budget boards, county treasurers, and trustees as it may deem necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the department of administration.

(4) If an erroneous claim for state equalization aid or an erroneous reimbursement of excess school equalization funds is made by a county superintendent through failure to include vehicle fee revenue or state reimbursement revenue credited to the elementary and high school equalization levies or permissive levies, the board of public education shall require the superintendent of public instruction to adjust that year's state equalization aid payments to the county treasurer until the county's claim is corrected or shall take legal action to fully recover school equalization aid funds from a county with excess school equalization aid collections."

Section 2. **Effective date.** This act is effective on passage and approval.

Section 3. **Termination date.** Section 1(4) of this act terminates on January 1, 1985.

Approved March 24, 1983.

CHAPTER NO. 237

AN ACT PROVIDING FOR STATE USE AND DISTRIBUTION OF FEDERAL COMMUNITY SERVICES BLOCK GRANT FUNDS; DEFINING "HUMAN RESOURCE DEVELOPMENT COUNCIL"; PROVIDING FOR THE ADMINISTRATION OF FISCAL AND PROGRAM CONTROLS TO COMPLY WITH FEDERAL LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the federal Community Services Block Grant is a federal program designed to ameliorate the causes of poverty in communities within each state; and

WHEREAS, Human Resource Development Councils are nonprofit community organizations that have served multicounty areas of the state in the process of helping low-income persons; and

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WHEREAS, it is the basic purpose of Human Resource Development Councils to stimulate a better allocation of available local, state, private, and federal resources toward the goal of enabling low-income families and low-income individuals of all ages, in rural and urban areas, to attain skills, knowledge, and motivation and to secure the opportunities needed for them to become self-sufficient; and

WHEREAS, it is recognized that these needs can be best achieved by encouraging the participation of the private sector in these efforts; and

WHEREAS, to achieve these goals it is necessary to strengthen local community capabilities for planning and coordinating federal, state, and other resources so that duplication is eliminated whenever possible through the efforts of local officials, organizations, and interested and affected citizens.

THEREFORE, this act is intended to achieve a better allocation of available federal and state resources.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Block grant" means the federal community services block grant established under 42 U.S.C. section 9901, et seq. (95 Stat. 511, et seq.).

(2) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(3) "Human resource development council" means a nonprofit public or private community organization serving low-income persons in a multicounty area that has the same boundaries as one or more substate planning districts established by executive order of the governor.

Section 2. **Allocation of federal community services block grant funds.** The department shall allocate the state's share of the block grant funds as follows:

(1) The department may retain 5% for administrative costs and 5% for special projects.

(2) The balance of the block grant funds after any retention pursuant to subsection (1) must be distributed to human resource development councils that are eligible to receive such funding under [section 3] as follows:

(a) $500,000, or if the balance of the block grant funds is less than $500,000, then the entire balance of the block grant funds, must be equally divided among the eligible human resource development councils; and

(b) except as provided under [section 4(2)], the balance of the block grant funds after distribution under subsections (1) and (2)(a) must be divided among eligible human resource development councils as follows:

(i) one-half based upon the population residing within the areas of human resource development councils; and

(ii) one-half based upon the low-income population, as that population may be determined under the provisions of the block grant, residing within the areas of the human resource development councils.

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Section 3. **Eligible human resource development councils.** The department may not distribute block grant funds unless the human resource development council:

(1) meets the eligibility requirements set forth in 42 U.S.C. section 9904, including composition of the board; and

(2) has complied with federal and state fiscal control requirements and agrees to comply with all fiscal and program requirements of federal law.

Section 4. **Block grant plan — county and state approval.** (1) A human resource development council shall prepare a plan for use of block grant funds. The planned use must be in compliance with block grant requirements, and the plan must be made to further the goals stated in the block grant.

(2) The human resource development council shall submit the plan to the county governing bodies within its multicounty area. A county governing body may approve, disapprove, or offer amendments to the plan. If the county governing body and the human resources development council cannot agree as to the plan's components, the department shall prepare and approve a plan for such county. The department shall then allocate block grant funds to the appropriate human resource development council to administer according to the plan approved for such county by the department.

(3) The plan must be submitted to the department for approval prior to distribution by the department of block grant funds allocated to the human resource development council. The department may disapprove a plan, in whole or in part, only if the plan conflicts with a federal law or regulation. A disapproved plan may be amended and resubmitted to the department.

Section 5. **Fiscal and program responsibility.** The department shall ensure state compliance in fiscal accountability and program integrity relating to block grant funds and services. The department shall audit the human resource development councils as may be required by state and federal law.

Section 6. **Effective date.** This act is effective July 1, 1983.

Approved March 24, 1983.

CHAPTER NO. 238

AN ACT PROVIDING THAT CERTAIN PAYMENTS FROM THE GASOLINE AND VEHICLE FUELS TAX AND THE PUBLIC TRANSPORTATION PROGRAM BE PAID BY THE DEPARTMENT OF HIGHWAYS RATHER THAN THE STATE TREASURER; AMENDING SECTIONS 7-14-102 AND 15-70-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-102, MCA, is amended to read:

"7-14-102. Allocation of state funds for public transportation. (1) (a) The department of commerce shall allocate each year one-half of

the funds appropriated for the purposes of this section among the cities and urban transportation districts of the state which operate or contract for the operation of general public transportation systems.

(b) (i) A city or urban transportation district is eligible for an allocation based upon the ratio of its local financial support for public transportation to the total local financial support for all general public transportation systems in the state. Local financial support shall be determined by dividing the city's or district's expenditure of local revenues for public transportation operations during the fiscal year by the mill value of the city or urban transportation district. Each applicant city and urban transportation district shall compute its expenditure of local revenues for public transportation operations for a fiscal year immediately following the end of such year and shall apply allocations received against that deficit.

(ii) A city or urban transportation district may not receive more than 50% of any year's expenditure of local revenues for public transportation operations as an allocation under this section.

(2) One-half of the funds appropriated for the purposes of this section shall be paid by the *department of highways* to the counties of the state in the manner provided in 15-70-101(1)(a). Money distributed to counties under this section shall be used by the counties for highway or other transportation purposes.

(3) The department of commerce may make rules for the keeping of accounts for and otherwise implementing this section."

Section 2. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. All taxes, interest, and penalties collected under this chapter shall be turned over promptly to the state treasurer who shall place the same in the earmarked revenue fund to the credit of the department of highways. *Those* funds hereinbelow allocated to cities, towns, and counties shall be paid by the *department of highways from the earmarked revenue fund* to such cities, towns, and counties.

(1) $6,500,000 of the funds collected under this chapter shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (a) and (b) hereof:

(a) $2,950,000 shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

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(b) $3,550,000 shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities, and towns shall be used exclusively for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(5) For the purposes of this section where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this section where determination of mileage is necessary for distribution of funds, it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 24, 1983.

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CHAPTER NO. 239

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HEALTH, THE ENVIRONMENT, AND NATURAL RESOURCES; AMENDING SECTIONS 50-31-301, 50-38-235, 50-51-211, 75-20-303, 82-11-101, 87-1-605, 87-2-805, 87-4-122, 87-4-128, AND 90-5-110, MCA; AND REPEALING SECTIONS 49-4-201 AND 87-4-126, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-31-301, MCA, is amended to read:

"50-31-301. Definitions. As used in this part, the following definitions apply:

(1) "Established name", with respect to a drug or ingredient thereof, means:

(a) the applicable official name designated pursuant to section 508 of the federal act;

(b) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or provided that, where subsection (1)(b) of this section applies to an article recognized in the United States Pharmacopoeia, the official title used in the United States Pharmacopoeia shall apply;

(c) if neither subsection (1)(a) nor (1)(b) of this section applies, then the common or usual name, if any, of such drug or of such ingredient.

(2) "Antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(3) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

(4) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, marks or monograms unique to the manufacturer or distributor of the drug, or both.

(5) "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label whether or not he is the manufacturer of the drug.

(6) "Solid dosage form" means capsules or tablets intended for oral use.

(7) "Legend drug" means any drug defined by section 503(b) of the federal Food, Drug and Cosmetic Act, as amended on January 15, 1980, under which its label is required to bear the statement: "Caution: Federal law prohibits dispensing without prescription.""

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Section 2. Section 50-38-235, MCA, is amended to read:

"50-38-235. Cancellation of certificate. (1) Whenever any person to whom a certificate of compliance has been issued keeps or stores in the magazine covered by such certificate of compliance any quantity of explosives in excess of the maximum amount set forth in said certificate of compliance, the state fire marshal is authorized to cancel such certificate of compliance.

(2) Whenever a certificate of compliance is canceled by the state fire marshal for any cause hereinbefore specified, the state fire marshal shall notify the person to whom such certificate of compliance is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within 10 days from the giving of said notice.

(3) Failure to remove the explosives stored in said magazine within the time specified in said notice shall constitute a violation of this chapter."

Section 3. Section 50-51-211, MCA, is amended to read:

"50-51-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the *department* for a hearing within 10 days after notice of the grounds or charges has been received."

Section 4. Section 75-20-303, MCA, is amended to read:

"75-20-303. Opinion issued with decision — contents. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken.

(2) If the board has found that any regional or local law or regulation which would be otherwise applicable is unreasonably restrictive pursuant to 75-20-301(2)(f), it shall state in its opinion the reasons therefor.

(3) Any certificate issued by the board shall include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement shall include but not be limited to analysis of the following information:

(i) the environmental impact of the proposed facility;

(ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility;

(v) a plan for monitoring environmental effects of the proposed facility; and

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(vi) a time limit as provided in subsection (4), during which construction of the facility must be completed;

(b) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) The board shall issue as part of the certificate the following time limits during which construction of a facility must be completed:

(a) For a facility as defined in (b) or (c) of *75-20-104(10)* that is more than 30 miles in length, the time limit is 10 years.

(b) For a facility as defined in (b) or (c) of *75-20-104(10)* that is 30 miles or less in length, the time limit is 5 years.

(c) The time limit shall be extended for periods of 2 years each upon a showing by the applicant to the board that a good faith effort is being undertaken to complete construction. Under this subsection, a good faith effort to complete construction includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of any such permit or certificate.

(5) The provisions of subsection (4) apply to any facility for which a certificate has not been issued or for which construction is yet to be commenced."

Section 5. Section 82-11-101, MCA, is amended to read:

"82-11-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(4) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(5) "Field" means the general area underlaid by one or more pools.

(6) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection *(7)* of this section.

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(7) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.

(8) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

(9) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(10) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(11) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(12) "Waste" means:

(a) physical waste, as that term is generally understood in the oil and gas industry;

(b) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(c) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(d) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)"

Section 6. Section 87-1-605, MCA, is amended to read:

"87-1-605. Fees used to purchase recreational facilities. (1) One dollar of the fee for Class A resident fishing license, $1 of the fee for Class B-4 nonresident *5-day* fishing license, and $5 of the fee for the Class B nonresident fishing license shall be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land deemed necessary to provide recreational use thereof.

(2) The amount of funds used for operation, development, and maintenance may not exceed 25% of the moneys set aside each year under this section. The funds raised under this section may not be used in lieu of any

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funds or sources of funds currently being used for acquisition or purchase of fishing accesses, stream, river, or lake frontages and the land deemed necessary to provide recreational use thereof but serve in addition to those funds. The moneys used for operation, development, and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974."

Section 7. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under fifteen years of age. (1) Minors under 15 years of age may fish for and take fish during the open season without a license. However, no nonresident person under the age of 15 years may fish in or on any Montana waters without first having obtained a Class B or B-4 fishing license unless the nonresident person under the age of 15 years is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

(2) Residents, as defined by 87-2-102, under the age of 15 years may purchase Class A-1, A-3, and A-5 licenses at $2 per license."

Section 8. Section 87-4-122, MCA, is amended to read:

"87-4-122. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal thereof shall, in the opinion of the director, meet the following qualifications:

(1) be a person of at least 18 years of age who is physically capable and mentally competent to perform his duties as an outfitter;

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients (all equipment and facilities shall be subject to inspection at all reasonable times and places by the department or its designated agent);

(3) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated thereunder as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution thereof;

(4) have not been convicted or forfeited bond of $100 or more on more than one violation of the fish and game laws or applicable regulations of any state or the United States within the past 5 years;

(5) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, professional guide's, or conservation license from the state of Montana;

(6) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the

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applicant's services as an outfitter or professional guide during the license year immediately preceding that for which the application is made;

(8) have not committed any negligent act or misconduct while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of such outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony.

(10) have substantially complied with all department regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide."

Section 9. Section 87-4-128, MCA, is amended to read:

"87-4-128. Investigation of applicant — issuance or denial of license. (1) The director in his discretion may cause to be made such additional investigation and inquiry relative to the applicant for outfitter's or professional guide's license and an applicant's qualifications as he considers advisable.

(2) The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the director shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses shall be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this part and completing an application for license renewal on a form provided by the department but is exempt from having to retake the written examination.

(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of $50 will be charged in addition to the regular resident or nonresident outfitter's license *fee* if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license."

Section 10. Section 90-5-110, MCA, is amended to read:

"90-5-110. Taxation of projects. (1) Notwithstanding that title to a project may be in a municipality or county, such projects shall be subject

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to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in any year, but such projects shall not be subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in any year.

(2) Where personal property owned by a municipality or county is taxed under this section and such personal property taxes are delinquent, levy by warrant *for distraint* for collection of such delinquent taxes may only be made on personal property against which such taxes were levied."

Section 11. **Repealer.** Sections 49-4-201 and 87-4-126, MCA, are repealed.

Approved March 28, 1983.

CHAPTER NO. 240

AN ACT TRANSFERRING THE FUNCTION OF LICENSING PUBLIC CONTRACTORS FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF COMMERCE; CHANGING THE LICENSE FEE FOR EACH CLASS OF LICENSE; CHANGING THE CONTRACT VALUE LIMIT FOR A CLASS B LICENSE; REQUIRING A PUBLIC CONTRACTOR TO BE LICENSED IN A FIELD OF CONTRACTING; AMENDING SECTIONS 15-50-101 THROUGH 15-50-105, 15-50-204 THROUGH 15-50-206, 15-50-211 THROUGH 15-50-213, AND 15-50-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-50-101, MCA, is amended to read:

"15-50-101. Definitions. The following words, terms, and phrases in this chapter are, for the purposes hereof, defined as follows:

(1) "Department", unless the context clearly indicates otherwise, means the department of commerce as provided in 2-15-1801.

(2) "Field of contracting" includes but is not limited to the distinct fields of general contracting, mechanical contracting, electrical contracting, and plumbing, heating, and air-conditioning contracting.

(3) A "public contractor", within the meaning of this chapter, *includes* any person who submits a proposal to or enters into a contract for performing public construction work in the state with the federal government *or* state of Montana, or with any board, commission, or department thereof, or with any board of county commissioners or any city or town council, or with any agency of any *of them*, or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of $1,000.

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(4) The term "public contractor" includes subcontractors undertaking to perform work *within their field of contracting and within the limits of their class of license* covered by the original contract or any part thereof, the contract cost, value, or price of which exceeds the sum of $1,000.

(5) "Gross receipts" means all receipts from sources within the state, whether in the form of money, credits, or other valuable consideration, received from, engaging in, or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense whatsoever. However, gross receipts shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectable accounts written off from time to time, or payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person."

Section 2. Section 15-50-102, MCA, is amended to read:

"15-50-102. Administrative powers of department. The department is empowered to employ such assistance and to procure such records, supplies, and equipment as may be necessary to carry out the provisions of this chapter."

Section 3. Section 15-50-103, MCA, is amended to read:

"15-50-103. Rules. The department shall establish rules necessary for the effective implementation of the provisions of this chapter."

Section 4. Section 15-50-104, MCA, is amended to read:

"15-50-104. Records. The *department* shall maintain at Helena, Montana, open to public inspection during office hours, a complete indexed record of all applications and all licenses issued and all certificates of renewal and of cancellations or suspensions thereof and shall furnish a certified copy of any license issued, of renewal certificates, or of the cancellations or suspensions thereof, upon receipt of the sum of $1, and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein."

Section 5. Section 15-50-105, MCA, is amended to read:

"15-50-105. Disposal of fees. All moneys collected hereunder shall be deposited by the *department* with the state treasurer, who shall credit them to the general fund of the state."

Section 6. Section 15-50-204, MCA, is amended to read:

"15-50-204. Classes of licenses — fees. (1) *Within each field of contracting there* shall be three classes of licenses issued under the provisions of this chapter, and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof shall specify in his application *the field and* the class of license applied for.

(2) In any field of contracting:

(a) the holder of a Class A license shall be entitled to engage in the public contracting business within the state without any limitation as to

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the value of a single public contract project; subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in 15-50-101*(3)*. At the time of making the application for such license, the applicant shall pay to the *department* a fee in the sum of *$250.*

(b) the holder of a Class B license shall be entitled to engage in the public contracting business within the state but shall not be entitled to engage in the construction of any single public contract project of a value in excess of *$100,000* and shall pay to the *department* as a license fee the sum of *$150* for such Class B license at the time of making application therefor;

(c) the holder of a Class C license shall be entitled to engage in the public contracting business within the state but shall not be entitled to engage in the construction of any single public contract project of a value in excess of $25,000 and shall pay to the *department* as a license fee the sum of *$100* at the time of making application therefor.

(3) If a holder of a license for any class within a field of contracting applies for another license for the same class but within a different field of contracting, he shall pay a fee equal to 25% of the fee for the appropriate class of license as provided in subsection (2) to be licensed in the additional field. If an applicant for a license for any class within a field of contracting at the same time applies for a license for the same class but within a different field of contracting, he shall pay the fee for the appropriate class of license as provided in subsection (2) to be licensed in one of the fields of contracting plus 25% of the fee for the same class to be licensed in the other field."

Section 7. Section 15-50-205, MCA, is amended to read:

"15-50-205. Additional license tax imposed. (1) In addition to the fees enumerated above, each public contractor shall pay to the *department of revenue* an additional license fee in a sum equal to 1% of the gross receipts from public contracts during the income year for which the license is issued.

(2) The additional license fee shall be computed upon the basis of the entire contract for each separate contract let by any of the public bodies as specified in 15-50-101*(3)*."

Section 8. Section 15-50-206, MCA, is amended to read:

"15-50-206. Withholding license fee from payments — refunds. (1) The prime contractor shall withhold the additional 1% license fee from payments to his subcontractors and inform the department of revenue on prescribed forms of the amount of the additional 1% license fee in his account to be allocated and transferred to the subcontractor. The notification to transfer portions of the additional 1% license fee must be filed within 30 days after each payment is made to subcontractors. If any prime contractor fails to file the required allocation and transfer report at the time required by or under the provisions of this chapter, a penalty computed at the rate of 10% of the additional 1%

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license fee withheld from subcontractors shall be due from the prime contractor.

(2) The state, county, city, or any agency or department thereof, as described in 15-50-101*(3)* for whom the contractor is performing public work shall withhold, in addition to other amounts withheld as provided by law, 1% of all payments due the contractor and shall transmit such moneys to the department of revenue. In the event that the 1% of gross receipts is not withheld as provided, the contractor shall make payment of these amounts to the department within 30 days after the date on which the contractor receives each increment of payment for work performed by the contractor.

(3) Any overpayment of the 1% of gross receipts withheld or paid by any contractor hereunder shall be refunded by the department *of revenue* at the end of the income year upon written application therefor."

Section 9. Section 15-50-211, MCA, is amended to read:

"15-50-211. Application for license — contents. To obtain a license under this chapter, the applicant shall submit on such forms as the *department* shall prescribe an application, under oath, which shall contain a statement of the applicant's experience and qualifications as a contractor; the value and character of contract work completed and for whom performed during 5 years prior to the filing of such application; and a complete financial statement on such forms and disclosing such information as shall be required by the *department*. Such application shall also contain such other information as may be requested by the *department* under such rules as may be adopted by *the department* and which will assist *the department* in determining the applicant's fitness to act in the capacity of a public contractor as defined in this chapter. Such application shall also contain a statement that the applicant desires the issuance of a license under the terms of this chapter and shall specify the *field of contracting and the* class of license applied for."

Section 10. Section 15-50-212, MCA, is amended to read:

"15-50-212. Investigation of applicant — issuance of license. It shall be the duty of the *department* to investigate and determine the applicant's fitness to act in the capacity of public contractor as defined in this chapter, and no license shall be issued to such applicant until the expiration of 10 days from and after the filing of such application. The license so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within this state, subject to the limitations of such license, until the expiration of the then-current calendar year."

Section 11. Section 15-50-213, MCA, is amended to read:

"15-50-213. Renewal — waiting period after cancellation. (1) Any license issued under the provisions of this chapter may be renewed for each successive calendar year by obtaining from the *department* a certificate of renewal thereof. For the purpose of obtaining such certificate of renewal, the licensee shall file with the *department* an application therefor, stating the *field of contracting and* class of license applied for and

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containing *at least* the same information as that required in the application for the original license. The application for such certificate of renewal must be made to the *department* on or before March 1 of each successive calendar year, and such renewal certificate shall be good for the then-current calendar year.

(2) At the time of filing the application for a certificate of renewal, the applicant shall pay to the *department* a license fee equal to 50% of the license fee for the original license, provided that if any applicant for a certificate of renewal shall apply for a renewal under a different *field or* class from the license theretofore issued to him, such new license shall be issued only upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.

(3) All certificates of renewal wherein the applicant does not apply for a change in the *field or* class of license shall be issued by the *department* to the applicant forthwith when the application is filed and the license renewal fee paid.

(4) After cancellation of a license, such licensee shall not be relicensed during the current calendar year in which the offense was committed."

Section 12. Section 15-50-302, MCA, is amended to read:

"15-50-302. Complaints against licensee — grounds — investigation — hearing — suspension of license — appeals. (1) Any person or other organization may file a duly verified complaint with the *department* charging that the licensee is guilty of one or more of the following acts or omissions:

(a) abandonment of any contract without legal excuse;

(b) diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this chapter or for a specified purpose in the prosecution or completion of any contract and their application or use for any other contract, obligation, or purpose with intent to defraud or deceive creditors or the owner;

(c) the doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;

(d) the making of any false statement in any application for a license or renewal thereof;

(e) the failure to comply with the provisions of 18-1-112 requiring preference of products manufactured or produced in this state by Montana industry and labor.

(2) Upon the filing of such complaint, the *department* shall investigate the charge and within 60 days after the filing of such complaint render and file *a* decision, with *the* reasons therefor. If the *department's* decision be that the licensee has been guilty of any of such acts or omissions, *the department* shall suspend the contractor's license. At any time within 20 days thereafter, the complainant or the contractor may petition the

department for a rehearing. In the order granting or denying such rehearing, the *department* shall set forth a statement of the particular grounds and reasons for *the department's* actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the *department* shall set the matter for further hearing on due notice to the parties and, within 30 days after submission of the matter, serve *the department's* decision after rehearing in like manner as an original decision.

(3) The filing of such petition for rehearing as to the *department's* actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

(4) Within 30 days after the decision on rehearing, any party aggrieved by such decision of the *department* may appeal therefrom to the district court in and for the county in which the licensee under this chapter resides or does business as a public contractor by serving upon the *department* a notice of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

(5) In all cases where the licensee has filed his notice of appeal from the decision of the *department* or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy."

Approved March 28, 1983.

CHAPTER NO. 241

AN ACT TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COOPERATE WITH THE FEDERAL GOVERNMENT IN IMPLEMENTATION OF THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 TO REMEDY THE RELEASE OF HAZARDOUS SUBSTANCES AND CONTAMINANTS INTO THE ENVIRONMENT; PROVIDING FOR FUNDING OF HAZARDOUS WASTE PROGRAMS; AMENDING SECTIONS 15-38-202 AND 75-10-532, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature finds that the existence of hazardous substances and contaminants in the environment and hazardous waste disposal sites poses a significant health hazard through potential and actual contamination of the environment. [Sections 1 through 4] are therefore enacted to protect the public health, safety, and welfare through cooperation with the federal government under the federal Comprehensive

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Environmental Response, Compensation, and Liability Act of 1980 to provide for the disposal and control of such hazardous substances and contaminants in a safe and environmentally sound manner.

Section 2. **Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510.

(2) "Contaminant" includes but is not limited to any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction), or physical deformations in such organisms or their offspring. The term does not include petroleum (including crude oil or any fraction thereof that is not specifically listed or designated as a hazardous substance as provided in subsection (4)(a)) or natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and such synthetic gas.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) (a) "Hazardous substance" means:

(i) any substance designated pursuant to section 311(b)(2)(A) of the federal Water Pollution Control Act;

(ii) any element, compound, mixture, solution, or substance designated a hazardous substance by regulations promulgated by the administrator of the federal environmental protection agency pursuant to section 102 of CERCLA;

(iii) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the federal Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of congress);

(iv) any toxic pollutant listed under section 307(a) of the federal Water Pollution Control Act;

(v) any hazardous air pollutant listed under section 112 of the federal Clean Air Act; and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the environmental protection agency has taken action pursuant to section 7 of the federal Toxic Substances Control Act.

(b) The term does not include petroleum (including crude oil or any fraction thereof that is not specifically listed or designated as a hazardous

substance as provided in subsection (4)(a)) or natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas.

(5) "Hazardous waste" means a solid waste or combination of solid wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(6) "President" means the president of the United States.

(7) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes:

(a) any release that results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;

(b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(c) (i) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the nuclear regulatory commission under section 170 of that act; or

(ii) for the purposes of section 104 of CERCLA or any other response action, any release of source byproduct or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the federal Uranium Mill Tailings Radiation Control Act of 1978; and

(d) the normal application of fertilizer.

(8) "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment that prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to the present or future public health or welfare or the environment. The term includes but is not limited to such actions at the location of the release as storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of released hazardous substances or contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; provision of alternative water supplies; and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation

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of residents and businesses and community facilities if the president determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or is otherwise necessary to protect the public health or welfare. The term does not include offsite transport of hazardous substances or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials unless the president determines that such actions:

(a) are more cost-effective than other remedial actions;

(b) will create a new capacity to manage, in compliance with subtitle C of the federal Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

(c) are necessary to protect public health or welfare or the environment from a present or potential risk that may be created by further exposure to the continued presence of such substances or materials.

Section 3. **Cooperative agreement — authority of department.** (1) In order to assist in implementation of CERCLA, the department may:

(a) participate in the determination of appropriate remedial action to deal with the release or threatened release within Montana of:

(i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

(ii) any hazardous substance;

(b) in the event of the release or threatened release of any of the substances described in subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing mutual commitments of each party to remedial action, including the elements required by subsection (2) of this section.

(2) A cooperative agreement must contain the following assurances:

(a) the state of Montana will assure the future maintenance of the removal and remedial actions agreed upon for the expected life of such actions;

(b) a hazardous waste disposal facility is available to the state of Montana which meets the specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and

(c) the state of Montana will pay or assure payment of a share of the costs of the remedial action, including all future maintenance.

Section 4. **Cooperative agreement — when effective.** (1) If a cooperative agreement requires expenditure of state and federal funds which, together with the monetary obligation contained in any prior cooperative agreement made during the same biennium, exceeds the amount appropriated for that biennium for implementation of [sections 1 through

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4], the agreement is not effective until it is approved by the legislature and an appropriation is made providing the level of funding necessitated by the agreement.

(2) A cooperative agreement that does not require expenditure of funds exceeding the appropriation for the biennium for implementation of [sections 1 through 4] is effective when signed by the governor and the president or their respective representatives.

Section 5. Section 75-10-532, MCA, is amended to read:

"75-10-532. Disposition of moneys collected. All moneys received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for:

(1) the control, collection, recycling, and disposal of junk vehicles and component parts; *and*

(2) implementation by the department of health and environmental sciences during the 1985 biennium of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with [sections 1 through 4], up to an amount not exceeding $220,000."

Section 6. Section 15-38-202, MCA, is amended to read:

"15-38-202. Investment of resource indemnity trust account — expenditure — minimum balance. (1) All moneys paid into the resource indemnity trust account shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust account shall annually be added thereto until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the account reaches $100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the account may never be less than $100 million.

(2) Beginning in fiscal year 1982, provided the amount in the resource trust account is greater than $10 million, 30% of the interest income of the resource indemnity trust account must be allocated to the water development earmarked account created by 85-1-604.

(3) Beginning in fiscal year 1986, 6% of the interest income of the resource indemnity trust account must be allocated to the department of health and environmental sciences to be used to implement the Montana Hazardous Waste Act and the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with [sections 1 through 4]. Any funds remaining unexpended at the end of each fiscal year will revert to the resource indemnity trust interest account."

Section 7. **Effective date.** This act is effective on passage and approval.

Approved March 28, 1983.

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CHAPTER NO. 242

AN ACT TO ADOPT THE NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT; PROVIDING STATEMENTS OF POLICY AND PURPOSE; ESTABLISHING REGULATORY PRACTICES FOR REGIONAL LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT FACILITIES; ESTABLISHING THE NORTHWEST LOW-LEVEL WASTE COMPACT COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Northwest Interstate Compact on Low-Level Radioactive Waste Management.** The legislature of the state of Montana approves and ratifies the compact designated as the "Northwest Interstate Compact on Low-Level Radioactive Waste Management", which compact is as follows:

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

ARTICLE I — Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II — Definitions

As used in this compact:

(1) "Facility" means any site, location, structure, or property, excluding federal waste facilities, used or to be used for the storage, treatment, or disposal of low-level waste;

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, spent reactor fuel, or material classified as either high-level waste or waste

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which is unsuited for disposal by near-surface burial under any applicable federal regulations;

(3) "Generator" means any person, partnership, association, corporation, or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste;

(4) "Host state" means a state in which a facility is located.

ARTICLE III — Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state;

(2) periodic unannounced inspection of the premises of such generators and the waste management activities thereon;

(3) authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state;

(4) assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations;

(5) after receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, taking appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this article. Nothing in this article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this article.

ARTICLE IV — Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside the region comprising the party states, except as provided in Article V.

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(3) Until such time as paragraph (2) of this article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate must be in such form as may be required by the host state and shall contain at least the following:

(a) the generator's name and address;

(b) a description of the contents of the low-level waste container;

(c) a statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by his agent or by a representative of the United States Nuclear Regulatory Commission and was found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state;

(d) a binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprising the party states in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in its region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho, which host hazardous chemical waste disposal facilities, will allow access to such facilities by generators within other party states. Nothing in this compact may be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region composed of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facilities to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V — Northwest Low-Level Waste Compact Committee

The Governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The

officials so designated shall together comprise the Northwest Low-Level Waste Compact Committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators, or regional compact entities outside the region comprising the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI — Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this article, any eligible party state may become a party to this compact by the execution of an executive order by the Governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its Legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every 5-year period.

ARTICLE VII — Severability

If any provision of this compact or its application to any person or circumstance is held to be invalid, all other provisions of this compact and the application of all of its provisions to all other persons and circumstances shall remain valid, and to this end the provisions of this compact are severable.

Section 2. **Administration of compact — fees.** (1) The department of health and environmental sciences, as the state radiation control agency, shall administer the provisions of the compact.

(2) The department may assess and collect fees for services rendered in inspecting and regulating low-level radioactive waste generators, transporters, and disposal facilities. Such fees must cover the department's costs for those services and must be deposited in the earmarked revenue fund for use by the department. State and local government agencies, including the university system, are exempt from the payment of fees.

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(3) The department may adopt rules under the authority contained in 75-3-201(3)(b) to implement the provisions of this compact.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 75, chapter 3, and the provisions of Title 75, chapter 3, apply to sections 1 and 2.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 28, 1983.

CHAPTER NO. 243

AN ACT REESTABLISHING THE BOARD OF WATER AND WASTEWATER OPERATORS AS THE WATER AND WASTEWATER OPERATORS' ADVISORY COUNCIL; CLARIFYING THE ADVISORY STATUS OF THE ADVISORY COUNCIL; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO HOLD EXAMINATIONS TO CERTIFY OPERATORS; PERMITTING THE DEPARTMENT TO ESTABLISH CONTINUING EDUCATION REQUIREMENTS AND TO ISSUE TEMPORARY CERTIFICATES; REQUIRING REPORTING OF AN OPERATOR'S TERMINATION OF EMPLOYMENT; CLARIFYING THE DEPARTMENT'S DISCIPLINARY AUTHORITY; REQUIRING FEES COMMENSURATE WITH COSTS; AMENDING SECTIONS 2-8-103, 2-15-2105, 37-42-102, 37-42-201 THROUGH 37-42-203, 37-42-301, 37-42-302, 37-42-304, 37-42-305, 37-42-307 THROUGH 37-42-309, AND 37-42-321; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Water and Wastewater Operators and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation the Legislative Audit Committee recommends that the Board of Water and Wastewater Operators be reestablished as the Water and Wastewater Operators' Advisory Council.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of water and wastewater operators, created pursuant to 2-15-2105, is reestablished for 6 years pursuant to 2-8-122 as the water and wastewater operators' advisory council.

Section 2. Section 2-8-103, MCA, is amended to read:

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"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of commerce, created by 2-15-1881;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of commerce, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

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(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

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(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates July 1, 1989: water and wastewater operators' advisory council, department of health and environmental sciences, created by 2-15-2105."

Section 3. Section 2-15-2105, MCA, is amended to read:

"2-15-2105. Water and wastewater operators' advisory council. (1) There is a water and wastewater *operators' advisory council.*

(2) The *council* consists of seven members. Except as provided in subsection (2)(e) of this section, the members shall be appointed by the governor. The members are:

(a) two members who are employed water supply system or water treatment plant operators holding valid certificates. One of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(b) two members who are employed wastewater treatment plant operators holding valid certificates. One of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator.

(c) one member serving on the faculty of a university or college whose major field is related to water supply systems, wastewater treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) one member who is a representative of a municipality required to employ a certified operator and who holds a position of either city manager, city engineer, director of public works, works manager, or their equivalent;

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(e) the administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator.

(3) Members, except the ex officio voting member from the department of health and environmental sciences, shall serve for a term of 6 years."

Section 4. Section 37-42-102, MCA, is amended to read:

"37-42-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state) wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "Wastewater treatment plant" means a facility designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters and which serves 10 or more families or serves an industry employing 10 or more persons.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves 10 or more families or supplies an industry employing 10 or more persons.

(8) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and which serves 10 or more families or serves an industry employing 10 or more persons.

(9) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use."

Section 5. Section 37-42-201, MCA, is amended to read:

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"**37-42-201. Meetings — compensation of members — expenses.** (1) Annually, when new members are appointed to the *council*, a chairman shall be elected at the next *council* meeting.

(2) Meetings may be called by the chairman or on written request of four members of the *council* when necessary to carry out *its function to advise the department under* this chapter. Four members constitute a quorum.

(3) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5)."

Section 6. Section 37-42-202, MCA, is amended to read:

"**37-42-202. Rulemaking power — examinations — continuing education requirements.** *(1)* The *department* shall adopt rules necessary to carry out this chapter. The rules shall include but are not limited to provisions establishing the basis for classification of treatment plants under 37-42-104, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this chapter.

(2) The department shall hold at least one examination each year, at a time and place designated by the department, for the purpose of examining candidates for certification.

(3) The department may establish reasonable continuing education requirements for certified water and wastewater operators."

Section 7. Section 37-42-203, MCA, is amended to read:

"**37-42-203. Duty to advise and assist department.** The *council* shall advise and assist the department in the administration of the certification program. The *council* shall serve as an advisory board to the department in actions relating to the qualifications of water and wastewater treatment plant operators."

Section 8. Section 37-42-301, MCA, is amended to read:

"**37-42-301. Department to certify operators.** (1) The department shall certify persons as to their qualifications to supervise successfully the operation of such water and wastewater treatment plants and water distribution systems.

(2) In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water."

Section 9. Section 37-42-302, MCA, is amended to read:

"**37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates.** (1) It is unlawful for a person, firm, or corporation both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate it unless the competency of the operator is certified to by the department under this chapter.

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(2) Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this chapter.

(3) For good cause shown, the department may issue temporary certificates that are valid for up to 1 year."

Section 10. Section 37-42-304, MCA, is amended to read:

"**37-42-304. Application for operator's certificate — fee.** A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost *as established pursuant to 37-1-134* and shall not act on an application until the fee has been paid."

Section 11. Section 37-42-305, MCA, is amended to read:

"**37-42-305. Certification without examination.** The *department* may consider for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the *department* of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under *37-42-202(2)* and 37-42-301."

Section 12. Section 37-42-307, MCA, is amended to read:

"**37-42-307. Retention of certificate by operators who terminate employment — notification to department.** *(1)* Operators who terminate employment may retain their certificate for 2 years, providing that all other requirements are met. After 2 years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification provided appropriate proof of competency is presented to the *department*. Successful completion of an examination may be required at the discretion of the *department*.

(2) Any person, firm, or corporation, both municipal and private, shall notify the department within 3 business days after termination if a certified water or wastewater operator terminates employment."

Section 13. Section 37-42-308, MCA, is amended to read:

"**37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.** (1) Certificates issued under this chapter shall be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule *adopted by the department pursuant to 37-1-134.*

(2) If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall have his certificate suspended by the *department*. If the certificate remains suspended for a period of more than 30 days, it shall be revoked

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by the *department*. However, the *department*, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the *department* on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the *department* that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension shall be given to certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through his own fault desires to continue as a water or wastewater plant operator, he must make application to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the *department*."

Section 14. Section 37-42-309, MCA, is amended to read:

"**37-42-309. Deposit of fees.** Filing and certification fees shall be deposited with the state treasurer in the department earmarked revenue fund and shall be used to pay the expenses of the *council* and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys."

Section 15. Section 37-42-321, MCA, is amended to read:

"**37-42-321. Revocation of operator's certificate — disciplinary action by department.** (1) The department may revoke the certificate of an operator, following a hearing by the department, when it is found that:

(a) the operator has practiced fraud or deception;

(b) reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or

(c) the operator is incompetent or unable to properly perform his duties.

(2) The department may take any disciplinary action pursuant to 37-1-136."

Section 16. **Existing rules.** Rules adopted by the board of water and wastewater operators in effect on [the effective date of this act] continue in effect under the administration of the department of health and environmental sciences until amended or repealed by the department. If amended, a rule continues in effect in its amended form.

Section 17. **Effective date.** This act is effective on passage and approval.

Approved March 28, 1983.

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CHAPTER NO. 244

AN ACT ALLOWING A COUNTY, CITY, TOWN, OR MUNICIPALITY TO ESTABLISH A FUND FOR PROGRAMS AND EMPLOYEE TRAINING FOR LICENSED DAY-CARE CENTERS; REMOVING CITIES', TOWNS', AND MUNICIPALITIES' AUTHORITY TO ESTABLISH DAY-CARE CENTERS AND HOMES; AMENDING SECTION 7-16-4114, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-4114, MCA, is amended to read:

"7-16-4114. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities. (1) The governing body of a *county,* city, town, or municipality may in its discretion establish a fund to establish and maintain *programs for the operation of* licensed day-care centers and homes within the geographic boundaries of the governing body by a levy of up to 1 mill on each dollar of taxable property of said governing body. The tax levy shall be in addition to all other tax levies.

(2) The governing body shall have the power, by resolution, to make expenditures from the fund as it may from time to time determine, provided that expenditures shall be made solely for the establishment, maintenance, and development of *programs for and training for operators and employees of* day-care centers and homes."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved March 28, 1983.

CHAPTER NO. 245

AN ACT ALLOWING A PERSON WHO IS TEMPORARILY TOTALLY DISABLED UNDER WORKERS' COMPENSATION LAWS TO USE WAGE CREDITS FROM EMPLOYMENT PRIOR TO THE DISABILITY FOR PURPOSES OF UNEMPLOYMENT BENEFITS; AMENDING SECTION 39-51-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment insurance laws and federal laws falling within the administrator's jurisdiction.

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(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the *four* quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. *For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 18 months of the individual's last employment.*

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter.

(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are

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considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(13) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

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(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved March 28, 1983.

CHAPTER NO. 246

AN ACT TO AMEND SECTIONS 85-5-101 AND 85-5-201, MCA, TO INCLUDE WATER USERS WITH PERMITS AND CERTIFICATES ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION IN PROVISIONS PROVIDING FOR THE PAYMENT OF FEES AND COMPENSATION TO WATER COMMISSIONERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-101, MCA, is amended to read:

"85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of his discretion, to

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appoint one or more commissioners. The commissioners shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under chapter 2 of this title, the judge of the district court shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) At the time of the appointment of such water commissioner or commissioners, the district court shall fix their compensation, and the owners and users of the distributed waters, *including permittees and certificate holders*, shall pay their proportionate share of such fees and compensation.

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir which is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute such stored water to said irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. His compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of such stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection."

Section 2. Section 85-5-201, MCA, is amended to read:

"85-5-201. Distribution of water and related expenses. Every water commissioner appointed by the judge of the district court for that purpose shall have the authority to admeasure and distribute to the parties interested, under such decree, *permit, or certificate,* the water to which those who are parties to the decree or *holders of a permit or certificate*, or privy thereto, are entitled, according to their priority as established by the decree, *permit, or certificate.* The water commissioner, in

case the parties fail or refuse to do so, may incur necessary expenses in the making of headgates or dams for the distribution of the waters. Such expense shall be assessed against and paid by the party or parties for whom such services in the repair of the ditch or ditches and the making of any dams or headgates were necessary. In the discretion of the court, such costs or expenses may be assessed against the land upon which or for the benefit of which such expense had been incurred."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 28, 1983.

CHAPTER NO. 247

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE BOARD OF PHARMACISTS; CHANGING THE NAME OF THE BOARD TO THE BOARD OF PHARMACY; AMENDING THE PROVISIONS ON PROFESSIONAL EDUCATION; CHANGING THE TERMS OF MEMBERS OF THE BOARD AND PROVIDING A TRANSITION TO THE LONGER TERM; ESTABLISHING QUALIFICATIONS FOR THE PUBLIC MEMBERS OF THE BOARD; CLARIFYING THE PROVISIONS ON WHAT CONSTITUTES A VIOLATION OF PHARMACY LAW RELATING TO DISCIPLINARY ACTION AGAINST PHARMACISTS; REMOVING THE REQUIREMENT FOR A REEXAMINATION FEE; AMENDING SECTIONS 2-15-1843, 37-7-302, 37-7-311, AND 37-7-321, MCA; AND REPEALING SECTIONS 37-7-403 THROUGH 37-7-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board renamed — instructions to code commissioner.** (1) The board of pharmacists provided for in 2-15-1843 is renamed the board of pharmacy.

(2) The code commissioner is instructed to change every reference to the "board of pharmacists" in the Montana Code Annotated and in statutes passed by the 48th legislature and approved by the governor to "board of pharmacy".

Section 2. Section 2-15-1843, MCA, is amended to read:

"2-15-1843. Board of pharmacy. (1) There is a board of *pharmacy.*

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members must be licensed pharmacists, and two members must be from the general public.

(a) Each licensed member *must have graduated and received the first professional undergraduate degree from the school* of pharmacy of the university of Montana or *from an accredited* pharmacy *degree program*

that has been approved by the board. Each licensed member shall have at least 5 consecutive years of practical experience as a pharmacist immediately before his appointment. A licensed member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state shall be automatically disqualified from membership on the board.

(b) Each public member of the board must be a resident of the state and may not be or ever have been:

(i) a member of the profession of pharmacy or the spouse of a member of the profession of pharmacy;

(ii) a person having any material financial interest in the providing of pharmacy services; or

(iii) a person who has engaged in any activity directly related to the practice of pharmacy.

(3) Members shall serve staggered *5-year* terms. *A member may not serve consecutive 5-year terms on the board.* A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Section 37-7-302, MCA, is amended to read:

"37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may in the discretion of the board be returned to applicants not taking the examination.

(3) To be entitled to examination as a pharmacist, the applicant shall be of good moral character and *shall have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana or from an accredited pharmacy degree program that has been approved by the board. However, no* applicant may receive a registered pharmacist's license until he has complied with the internship requirements established by the board.

(4) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter. The fee for registration by reciprocity shall be prescribed by the board.

(5) Every person licensed and registered under this chapter shall receive from the department an appropriate certificate attesting the fact,

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which shall be conspicuously displayed at all times in his place of business."

Section 4. Section 37-7-311, MCA, is amended to read:

"37-7-311. Revocation of license issued to pharmacist or intern. The board shall revoke licenses issued by the department to a pharmacist or intern whenever the holder of the license:

(1) has obtained it by false representations or fraud;

(2) is an habitual drunkard or addicted to the use of narcotic drugs;

(3) has been convicted of violating the *Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.); chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters*; or

(4) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or intern."

Section 5. Section 37-7-321, MCA, is amended to read:

"37-7-321. Certified pharmacy license — suspension or revocation. (1) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee prescribed by the board, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board. Any default in the payment of such renewal fee after the date the same is due shall increase the renewal fee as prescribed by the board. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may suspend, revoke, or refuse to renew a pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter; or

(ii) a violation of the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, *U.S.C.*); *chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters;*

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(d) when the person to whom the license is granted is a natural person whose pharmacist license has been revoked; or

(e) when the pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(3) Before a license can be revoked, the holder is entitled to a hearing by the board."

Section 6. **Transition of terms of board members.** The provisions of [section 2 of this act] amending 2-15-1843(3), establishing 5-year staggered terms for members of the board of pharmacy, apply to the terms of members serving on the board on October 1, 1983. The governor shall modify the terms of such board members so that one term will expire annually in each of the 5 subsequent years.

Section 7. **Termination date of section 6.** Section 6 terminates on September 30, 1987.

Section 8. **Repealer.** Sections 37-7-403 through 37-7-405, MCA, are repealed.

Approved March 28, 1983.

CHAPTER NO. 248

AN ACT TO AMEND SECTION 82-11-125, MCA, TO REVISE THE CONFIDENTIALITY OF REPORTS OF STRATIGRAPHIC TEST WELLS FILED WITH THE BOARD OF OIL AND GAS CONSERVATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-125, MCA, is amended to read:

"82-11-125. Availability of cores or chips, cuttings, and bottom-hole temperatures to board. (1) An owner drilling a well for gas or oil shall make available to the board at its field offices representative cores or chips, when available, the cuttings from the well, and the bottom-hole temperatures of the wells, in order to facilitate the discovery of geothermal potential. However, cores, chips, or cuttings need not be so made available for a period of 6 months following completion or abandonment of the wells. The board may, however, relieve the owner of a well of the obligation to furnish cores, chips, or cuttings when, in the opinion of the board, the furnishing thereof would be unduly burdensome for the owner; however, the owner desiring relief must apply to and receive permission from the board to not so furnish.

(2) The owner of a stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the board's rules, shall within *3 years* from the date of the cessation of the drilling of the well make available to the board complete sets of sample cuttings and representative cores or chips and well

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logs of the wells, which logs shall include among other information the size of casing used, the type and depth of water if any located, and bottom-hole temperatures for geothermal purposes. The board shall require and the owner of a stratigraphic test well shall furnish, prior to the commencement of drilling of the well, a good and sufficient surety bond, to be approved prior to the commencement of the drilling, conditioned upon the proper plugging of the well prior to abandonment, the amount of the bond to be determined by the estimated depth as in the board's rules provided for oil and gas wells; prior to abandonment, the wells shall be plugged by the owner thereof or by the surety should the owner be in default, the plugging to conform to the standards set down and determined by the board."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 28, 1983.

CHAPTER NO. 249

AN ACT TO GENERALLY REVISE LANGUAGE IN CODE SECTIONS DEALING WITH THE BOARD OF HOUSING IN ORDER THAT REFERENCES TO THE TREASURY FUND STRUCTURE CONFORM TO CHAPTER 28, LAWS OF 1981, AS REQUIRED BY CHAPTER 28, SECTION 5, LAWS OF 1981; AMENDING SECTIONS 90-6-104, 90-6-107, AND 90-6-119, MCA; INSTRUCTING THE CODE COMMISSIONER TO MAKE NECESSARY CHANGES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-104, MCA, is amended to read:

"90-6-104. General powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning,

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development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all investment income from funds of the board less the cost for investment as prescribed by law shall be deposited in the housing *authority enterprise fund*;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of such sale;

(15) consent, whenever it deems it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

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(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges shall be limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses which may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means."

Section 2. Section 90-6-107, MCA, is amended to read:

"90-6-107. Accounts of the board. (1) There is a housing *authority enterprise fund in the proprietary fund type as* provided for in 17-2-102*(1)(b)*. All funds from the proceeds of bonds issued under this part, fees, and other moneys received by the board, moneys appropriated by the legislature for the use of the board in carrying out this part, and moneys made available from any other source for the use of the board shall be deposited in the housing *authority enterprise fund* except where otherwise provided by law. All funds deposited in the housing *authority enterprise fund, except funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part,* are continuously appropriated to and may be expended by the board for the purposes authorized in this part.

(2) There is a capital reserve account in the *housing authority enterprise* fund provided for in *subsection (1)*. The capital reserve account consists of the aggregate of moneys retained by the board under existing agreements with bondholders as the minimum capital reserve requirement described in 90-6-119 for each bond issue sold by the board.

(3) Funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part shall be deposited in the *housing authority enterprise fund.* Funds expended by the board under this subsection shall be repaid by the board from the fees and charges collected under this part and from any other moneys available for such repayment in accordance with this part."

Section 3. Section 90-6-119, MCA, is amended to read:

"90-6-119. Reserve funds and appropriations. (1) The board shall pay into the capital reserve account:

(a) any funds appropriated and made available by the state for the purpose of the account;

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(b) any proceeds of sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) any other funds which may be available to the board for the purpose of the account from any other source.

(2) All funds held in the capital reserve account shall be used solely for the payment of the principal of bonds secured in whole or in part by the account or of the *debt service* payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account shall not be withdrawn at any time in an amount which reduces the amount of the account to less than the sum of minimum capital reserve requirements established for the account, except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and *debt service* payments for the payment of which other moneys pledged are not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to the extent it does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

(3) The board may not issue bonds secured in whole or in part by the capital reserve account unless the board deposits in the account from the proceeds of the bonds issued or from any other sources an amount not less than the minimum capital reserve requirement for these bonds. For the purposes of this section, the term "minimum capital reserve requirement" means, as of any particular date of computation, an amount of money, as provided in the resolution or indenture of the board authorizing the bonds or notes, equal to not more than the greatest of the respective amounts for the current or any future fiscal year of the board of annual debt service on the bonds of the board secured in whole or in part by the account. The annual debt service for any fiscal year is the amount of money equal to the aggregate of all interest and principal payable on the bonds during the fiscal year, calculated on the assumption that all the bonds are paid at maturity. If any amount of the bonds is required to be redeemed on an earlier date by the operation of a *debt service* fund, then that amount is considered payable on those bonds during the year they are to be redeemed for the purposes of this calculation.

(4) In computing the amount of the capital reserve account, securities in which all or a portion of the account shall be invested shall be valued at par or, if purchased at less than par, at their cost to the board."

Section 4. **Code commissioner to make changes.** Whenever a reference to a treasury fund type, fund, or account appears in any new material enacted into the MCA by the 48th legislature and approved by the governor, whether in new sections or amended sections, the code commissioner, in consultation with the department of administration and the legislative fiscal analyst, shall change the reference in that material as necessary to reflect the fund structure provided for in 17-2-102. The code

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commissioner may make other incidental changes to reflect the intent of this section and 17-2-102 without changing the meaning.

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved March 28, 1983.

CHAPTER NO. 250

AN ACT ALLOWING THE COAL BOARD TO MAKE GRANTS TO QUALIFIED APPLICANTS FOR THE PURPOSE OF PAYING PART OR ALL OF AN APPLICANT'S CREDIT OBLIGATION FOR PREPAID PROPERTY TAXES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Prepaid tax credit — grants authorized.** The board may award a grant to a local government unit for the purpose of paying for part or all of the credit that the local government unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board must award the grant in accordance with 90-6-206.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 90, chapter 6, part 2, and the provisions of Title 90, chapter 6, part 2, apply to section 1.

Approved March 28, 1983.

CHAPTER NO. 251

AN ACT TO EXTEND THE TIME FOR THE USE OF REED ACT MONEY AS PROVIDED FOR IN SECTION 192 OF PUBLIC LAW 97-248; AMENDING SECTION 39-51-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-404, MCA, is amended to read:

"39-51-404. Requisition of money from unemployment trust fund for payment of administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

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(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the *34* preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such *35* 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the *34th* preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration fund but, until expended, shall remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund."

Approved March 28, 1983.

CHAPTER NO. 252

AN ACT TO AMEND SECTION 82-15-105, MCA, TO INCREASE LICENSE FEES FOR PETROLEUM MEASURING DEVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-15-105, MCA, is amended to read:

"82-15-105. Licenses and fees. (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until a license has been issued to him by the department. The license shall be obtained by the dealer by making application to the department upon blank forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall upon conviction be punished as provided by this part.

(2) The fee for this license shall be determined as follows and depends upon the number of devices utilized by the dealer:

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(a) each gasoline pump, diesel pump, or fuel oil pump measuring device—*$5*;

(b) each petroleum vehicle tank meter or bulk petroleum meter of 2 inches (5.08 centimeters) and under—*$15*;

(c) each bulk petroleum meter over 2 inches (5.08 centimeters)—*$20*;

(d) each liquefied petroleum liquid meter—*$25*;

(e) each vapor meter—$3;

(f) each petroleum and liquefied petroleum vehicle tank up to and including 2,000 gallons (7,570 liters)—$20;

(g) each petroleum and liquefied petroleum vehicle tank over 2,000 gallons (7,570 liters)—$20 plus $4 for each additional 1,000 gallons (3,785 liters).

(3) All licenses are annual and nontransferable as to person or location and expire on December 31 of each year. There is an additional charge of 50% on all license fees that are not paid before March 1 of each year in which the vehicle tank, meter, or measuring device is in use. If the fee is not paid, the equipment shall be sealed and removed from service by the department. It is unlawful for anyone to use a device so removed from service or to break the seal until all fees have been paid."

Approved March 28, 1983.

CHAPTER NO. 253

AN ACT ALLOWING THE DEPARTMENT OF REVENUE TO EMPLOY A QUALIFIED INDEPENDENT APPRAISER FOR CENTRALLY ASSESSED PROPERTY WHEN THE OWNER OF SUCH PROPERTY AND THE DEPARTMENT AGREE ON AN APPRAISER, TO PAY PART OR ALL OF THE COSTS, AND TO ACCEPT THE RESULTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Independent appraisal allowed — limitation.** The department of revenue may have property subject to the provisions of this chapter assessed by a qualified independent appraiser when both the department and the owner of the property subject to the assessment agree in writing:

(1) on a particular independent appraiser to do an appraisal;

(2) to share the costs of the independent appraisal; and

(3) to accept the results of the appraisal.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 23, and the provisions of Title 15, chapter 23, apply to section 1.

Approved March 28, 1983.

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CHAPTER NO. 254

AN ACT REVISING THE PROVISIONS FOR STATE GRANTS TO COUNTIES FOR DISTRICT COURT ASSISTANCE; PROVIDING A FORMULA FOR COMPUTING THE GRANTS; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO AUDIT GRANT RECIPIENTS; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; AMENDING 7-6-2352, MCA; REPEALING SECTION 3, CHAPTER 692, LAWS OF 1979; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2352, MCA, is amended to read:

"7-6-2352. State grants to district courts — rules. (1) The department of administration shall make grants to the governing body of a county for the district courts for assistance, as provided in this section. The grants are to be made from funds appropriated to the department for that purpose. If the department approves grants in excess of the amount appropriated, each grant shall be reduced an equal percentage so the appropriation will not be exceeded.

(2) The governing body of a county may apply to the department for a grant by filing a written *request on forms provided by the department* by July *20*, for the previous fiscal year *unless the department grants a time extension upon request of the county. In its request for a grant, a county must certify that:*

(a) all expenditures from the district court fund have been lawfully made;

(b) no transfers from the district court fund have been or will be made to any other fund; *and*

(c) no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351.

(3) The department shall award a grant if the county's district court expenditures for the previous fiscal year exceeded the sum of:

(a) the product of the maximum mill levy authorized by law for district court purposes, whether or not assessed, multiplied by the previous year's taxable valuation of the county; and

(b) all revenues, except district court grants, required by law to be deposited in the district court fund for the previous fiscal year.

(4) Eligible court expenditures for grant purposes include all costs of the county associated with the operation and maintenance of the district court, from whatever fund paid, except costs for building and capital items and library maintenance, replacement, and acquisition.

(5) The department shall *notify each eligible* county *as soon as possible* of its intention to *award a grant to that county and the amount of the award.*

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(6) The grant received by the county shall be placed in the district court fund.

(7) After *all grants are awarded, the department shall audit each approved grant request. The department shall charge each county receiving a grant an audit fee in the same amount as the costs incurred in conducting the audit.*

(8) If the audit of a grant recipient discloses that the recipient received a grant in excess of the amount for which it was eligible, the recipient shall repay the excess to the department. The department shall redistribute any repaid excess amounts to the other counties that received grants from the appropriation from which the overpayment was made, on the same basis as the original awards. No county is eligible for a district court grant if it owes the department a refund of a prior year's overpayment.

(9) The department shall prescribe rules and forms necessary to effectively administer this section. The department may require a county to provide any information considered necessary for the administration of the program."

Section 2. **Repealer.** Section 3, Chapter 692, Laws of 1979, is repealed.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

CHAPTER NO. 255

AN ACT TO GIVE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES THE AUTHORITY TO ADOPT RULES SETTING FEES TO BE PAID BY HAZARDOUS WASTE GENERATORS; AMENDING SECTION 75-10-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-405, MCA, is amended to read:

"75-10-405. Administrative rules. The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(1) identification and classification of those hazardous wastes subject to regulation and those that are not;

(2) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(3) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

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(4) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(5) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(6) requirements for training of facility personnel and for financial assurance of facility owners and operators;

(7) requirements for registration of generators and transporters;

(8) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators; and

(9) other rules which are necessary to obtain and maintain authorization under the federal program, except that the department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended."

Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

CHAPTER NO. 256

AN ACT PROVIDING FOR THE ASSIGNMENT AND TRANSFER OF JUDGES, WATER MASTERS, AND OTHER COURT PERSONNEL IN THE GENERAL ADJUDICATION OF WATER RIGHTS; AMENDING SECTIONS 3-7-223, 3-7-301, AND 19-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-223, MCA, is amended to read:

"3-7-223. Duties of the chief water judge. The chief water judge shall:

(1) coordinate with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and properly compiled and transferred to the water judge in each water division;

(2) assure that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree;

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(3) assure that any contested or conflicting claims are tried and adjudicated as expeditiously as possible;

(4) assign court personnel to divisions and duties as needed; and

(5) request and secure the transfer of water judges between divisions as needed."

Section 2. Section 3-7-301, MCA, is amended to read:

"**3-7-301. Appointment of water masters — removal.** (1) The *chief water judge or the* water judge in each water division *may* appoint one *or more* water *masters.*

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the *chief* water judge and may be removed by the *chief* water judge.

(5) A water master may serve in any water division and may be moved among the water divisions at the discretion of the chief water judge."

Section 3. Section 19-5-103, MCA, is amended to read:

"**19-5-103. Call of retired judge for duty.** (1) Every judge or justice receiving retirement pay under the provisions of this chapter shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court, any district court, or any water court under such directions as the supreme court may give, including the examination of the facts, cases, and authorities cited, and the preparation of opinions for and on behalf of the supreme court, district court, or water court, or to serve as water judge. The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court. Such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases insofar as not inconsistent with the constitution of the state.

(2) Such retired judge or justice, when called to service as herein provided, shall be reimbursed for his actual expenses, if any, in responding to such call. In addition, for each day of service a retired justice or judge is entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial position in which the service is rendered minus an amount equal to one-twentieth of the monthly retirement allowance the retired justice or judge is receiving for each day of service rendered."

Approved March 29, 1983.

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CHAPTER NO. 257

AN ACT TO ENCOURAGE STATE AGENCIES TO GIVE CONSIDERATION TO HERITAGE PROPERTIES FOR NEW SPACE NEEDS IN CERTAIN CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State consideration for use of heritage properties.** (1) (a) Prior to the purchase, lease, or rent of space for state agency purposes, the director of the department involved may request the state historic preservation officer to identify existing properties within the geographical area where the space is needed that:

(i) are heritage properties as defined in 22-3-421 which are listed or eligible to be listed in the register of historic places; and

(ii) may be suitable, either in their existing condition or through repair or alteration, for such purposes.

(b) The state historic preservation officer shall provide the requested information within 30 days.

(2) The director may review and give consideration to the properties identified by the state historic preservation officer unless use of the space would not be feasible and prudent compared with available alternatives.

Approved March 29, 1983.

CHAPTER NO. 258

AN ACT AMENDING SECTION 32-1-432, MCA, TO PROVIDE EXCLUSIONS FROM A BANK'S LENDING LIMIT FOR LOANS SECURED BY CERTAIN DEPOSITS; AND TO PROVIDE A SIMILAR EXCLUSION FOR 2-DAY LOANS TO OTHER BANKS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-432, MCA, is amended to read:

"**32-1-432. Limitations on loans.** (1) (a) The total loans to a person, partnership, or corporation by a bank, including loans to a partnership and to the several members thereof, shall at no time exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, may not be considered as money borrowed.

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(c) The limitations imposed on total loans by this section do not apply to loans and investments secured by obligations of the United States having a value of 100% of the amount loaned or invested or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least 120% of the amount loaned on them.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the several members of a firm, partnership, or unincorporated association to the loaning bank shall be included in the liabilities of the firm, partnership, or unincorporated association. That portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible shall be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans to a limited partner of a limited partnership, those portions of the liabilities of the limited partnership for which the limited partner is free from liability shall be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

(4) The limitations of this section do not apply to the extent that the loan is secured by pledged deposits in the lending bank.

(5) The limitations of this section do not apply to a loan of funds made by a bank to another bank if the term of the loan does not exceed 2 business days."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

CHAPTER NO. 259

AN ACT TO PROVIDE FOR INVESTMENT BY BANKS IN THE CAPITAL STOCK OF BANK SERVICE CORPORATIONS; AMENDING SECTION 32-1-422, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-422, MCA, is amended to read:

"**32-1-422. Restriction on investment in corporate stock.** *(1)* No commercial or savings bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock

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of any corporation, unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within 6 months thereafter, if it can be sold for the amount of the claim of such bank against it. All capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within 1 year after such purchase or acquisition, or if such stock is unmarketable, it shall be charged off as an investment loss, which shall be equivalent to sale thereof. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

(2) Notwithstanding subsection (1), a commercial or savings bank may invest up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

CHAPTER NO. 260

AN ACT TO GENERALLY REVISE AND CLARIFY LAWS PERTAINING TO INCOME TAXATION OF ESTATES, PROPERTY HELD IN TRUST, AND BENEFICIARIES OF ESTATES OR TRUSTS; AMENDING SECTION 15-30-135, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-135, MCA, is amended to read:

"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax shall be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided, except to the extent such estates and trusts shall be held for educational, charitable, or religious purposes, which tax shall be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(c) income held for future distribution under the terms of the will or trust; *and*

(d) income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant, to be held or distributed as the court may direct.

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(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries *are* taxable with reference to the income of such estate or trust. In cases under subsections *(a) and* (d) of subsection (1), the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under subsections (a), (b), and (c) of subsection (1), the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary. If the taxpayer's net income for *the* taxable year *of the estate or trust* is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases, a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

(4) The fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(5) Where any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor."

Section 2. **Computation of net income of estates or trusts.** (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision thereof, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

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(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended, if such expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) all benefits received as federal employees' retirement not in excess of $3,600;

(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706;

(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105;

(k) all benefits paid under the Montana highway patrolmen's retirement system that are specified as exempt from taxation by 19-6-705;

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(l) Montana income tax refunds or credits thereof;

(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children;

(n) all benefits paid by first- or second-class cities for the Montana police officers' retirement system provided for by the metropolitan police law;

(o) all benefits not in excess of $360 received as an annuity, pension, or endowment under private or corporate retirement plans or systems.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

Section 3. **Adjustments to income of estates and trusts.** (1) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(2) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

(3) The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.

(4) Remedies available for the administration, enforcement, and collection of individual income taxes also apply to estates and trusts.

Section 4. **Effective date — applicability.** This act is effective on passage and approval and is applicable to taxable years beginning after December 31, 1982.

Section 5. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, apply to sections 2 and 3.

Approved March 29, 1983.

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CHAPTER NO. 261

AN ACT AMENDING SECTION 85-7-1710, MCA, TO PROVIDE THAT THE BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT MAY BY RESOLUTION ESTABLISH THAT DISTRICT VOTES ARE TO BE CAST BY 1-ACRE RATHER THAN BY 40-ACRE BLOCKS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1710, MCA, is amended to read:

"85-7-1710. Qualification of electors and nature of voting rights. (1) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to lands within the district, herein designated electors, are entitled to vote:

(a) all individuals having the qualifications of electors under the constitution and general election laws of the state, except that no registration of electors may be required;

(b) guardians, executors, administrators, and trustees;

(c) domestic corporations, by their duly authorized agents.

(2) In all elections held under this part, each elector is permitted to cast one vote for each 40 acres of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks (except as hereinafter provided for), election precincts, or district divisions, but any elector owning any less than 40 acres of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district shall be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners may designate one of their number or an agent to cast the vote for the owners, and one vote only for each 40 acres of irrigable land or major fraction thereof may be cast by the voting co-owner or agent. Whenever land is under contract of sale to a purchaser residing within the state, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation or co-owners, the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district or with the election officials a written instrument of his authority, executed and acknowledged by the proper officers of the corporation, by the co-owners, or by the owner of land under contract of sale, as the case may be, and thereupon the agent or co-owner or purchaser, as the case may be, is an elector within the meaning of this part. Whenever the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of 5% or more of

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the total acreage of the district *or whenever the majority of the district board adopts a resolution allowing it*, each elector is permitted to cast one vote for each acre of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote. The balloting shall take place in the following manner: 10 votes or less, separate ballots will be used; more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10."

Approved March 29, 1983.

CHAPTER NO. 262

AN ACT AMENDING SECTION 85-7-1902, MCA, TO PROVIDE THAT A BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT MAY REFUSE DELIVERY OF WATER TO ANY PERSON WHO OWES MONEY TO THE DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1902, MCA, is amended to read:

"85-7-1902. Management of district by board. (1) The board of commissioners of every irrigation district established and organized under and by virtue of parts 1 and 15 of this chapter shall constitute the corporate authority of said district.

(2) The board shall have the power and it shall be the duty of the members thereof to manage and conduct the business and affairs of the district; adopt a corporate seal therefor; make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required and prescribe their duties.

(3) The board is hereby authorized and empowered to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this chapter or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by attorneys and in the name of such irrigation district.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. It shall be the duty of said board to pass or adopt bylaws and rules for the apportionment and distribution of water to the lands of the district and for the protection and preservation of the works and other property of the district, and the board may therein require the

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prompt payment of all *current and delinquent* taxes and assessments *and other financial obligations owing the district* as a prerequisite to water service. The bylaws and rules shall be printed in convenient form for distribution in the district. All orders and resolutions shall be passed or adopted by a majority of the commissioners by a yea and nay vote, to be entered upon the records of the board.

(5) Said board shall have power generally to do and perform all such other acts as shall be necessary or appropriate to fully carry out the purposes of this chapter."

Approved March 29, 1983.

CHAPTER NO. 263

AN ACT TO PROVIDE THAT ELEMENTARY AND HIGH SCHOOL TUITION BE REDUCED BY THE AMOUNT THE PARENT OF THE CHILD PAID IN DISTRICT AND COUNTY PROPERTY TAXES DURING THE PRECEDING SCHOOL YEAR FOR THE SUPPORT OF THE SCHOOL DISTRICT THE CHILD WILL ATTEND; AMENDING SECTIONS 20-5-303 AND 20-5-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-303, MCA, is amended to read:

"20-5-303. Individual tuition for elementary pupil. No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the attendance is approved, the trustees shall charge tuition at the same rate prescribed by 20-5-305 reduced by any amount which is uniformly waived by the trustees for all tuition payments. However, under this section, tuition *as determined in 20-5-305 shall be reduced by the amount the parent of the child paid* in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school."

Section 2. Section 20-5-313, MCA, is amended to read:

"20-5-313. Individual tuition for high school pupil. (1) Any child eligible to attend high school may attend school in the high school district in which he resides without payment of tuition.

(2) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any high school outside of his district of residence when the parent agrees to pay the tuition acceptable to the trustees of the high school district operating such high school. When the attendance is approved, the parent shall pay tuition at the rate

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fixed by the trustees. However, under this section, tuition *as determined in 20-5-312 shall be reduced by the amount the parent of the child paid* in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school."

Approved March 29, 1983.

CHAPTER NO. 264

AN ACT TO ELIMINATE THE REQUIREMENT THAT ONE VICE-PRESIDENT OF A BANKING CORPORATION BE CHOSEN FROM THE BOARD OF DIRECTORS; AMENDING SECTION 32-1-325, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-325, MCA, is amended to read:

"32-1-325. Selection of officers and employees — meetings and minutes. (1) The board of directors of a bank must hold a meeting at least once a month.

(2) The board of directors may elect a president, one or more vice-presidents, cashier and one or more assistant cashiers, and other officers and employees which they may from time to time consider to be to the best interest of the bank and fix their compensation. The president shall be chosen from the board of directors.

(3) The board of directors shall also elect a secretary who shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose, which minutes shall particularly disclose the date of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors shall be subscribed to by the presiding officer and secretary. The minutes shall be read and approved at the following meeting of the board of directors, and the minutes of the following meeting shall show that fact. The minute book shall be kept in the office of the bank at all times and shall be presented to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank by it and the names of the directors in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

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CHAPTER NO. 265

AN ACT TO AUTHORIZE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO GRANT AN EXEMPTION FROM AIR QUALITY RULES, UNDER CERTAIN CIRCUMSTANCES, FOR A PERIOD GREATER THAN 1 YEAR; AMENDING SECTION 75-2-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-212, MCA, is amended to read:

"75-2-212. Variances — renewals — filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption may be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) *The* exemption or partial exemption may be renewed if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application shall be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal the applicant shall give public notice of his application in accordance with rules of the board. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review thereof as provided by 75-2-411.

(5) Nothing in this section and no exemption, partial exemption, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or his property.

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(6) A person who owns or is in control of a plant, building, structure, process, or equipment (hereinafter called a facility) who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000. The department shall prepare a statement of actual costs, and funds in excess of this shall be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if no public hearing, environmental impact statement, or appreciable investigation by the department is necessary, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be deposited in the earmarked revenue fund provided for in 17-2-102. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department to:

(a) compile the information required for rendering a decision on the request;

(b) compile the information necessary for any environmental impact statements;

(c) offset the costs of a public hearing, printing, or mailing; and

(d) carry out its other responsibilities under this chapter."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

CHAPTER NO. 266

AN ACT TO REVISE THE OATH FOR TEACHERS; AMENDING SECTION 20-4-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-104, MCA, is amended to read:

"20-4-104. Qualifications. (1) Any person may be certified as a teacher when he satisfies the following qualifications:

(a) He is 18 years of age or older but is not more than 70 years of age.

(b) He has a certificate of a licensed physician attesting to his satisfactory health.

(c) He is of good moral and professional character.

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(d) He has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and such training shall be evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d).

(e) He has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America *and* The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when he satisfies the requirements of subsections (1)(a) through (1)(c) and the requirement for a specialist certificate provided in subsection (2) of 20-4-106."

Approved March 29, 1983.

CHAPTER NO. 267

AN ACT TO AUTHORIZE CATCHING WHITEFISH FROM THE KOOTENAI RIVER BY NETS AND TRAPS FOR PURPOSES OF SALE; AMENDING SECTIONS 87-3-204 AND 87-4-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-204, MCA, is amended to read:

"87-3-204. Restrictions on fishing methods. (1) No game fish may be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any such set gun, trap, or other device to entrap game fish be used, made, or set.

(2) It is unlawful for a person to take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand; to take or catch fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries; or to take or catch fish by means of the use of fishtraps, grabhooks, seines, nets, or other similar means for catching fish.

(3) The department may designate such waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the department. All such nongame fish so taken may be

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possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.

(4) The taking of black bass in Flathead Lake may be permitted by the department.

(5) The department shall have the power to designate certain waters where setlines may be used to fish for certain species of game or nongame fish, and the department may designate the number of hooks and lines and the length of line or lines which may be used as setlines.

(6) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the department declares an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish with longbow and arrow when the department declares an open season when paddlefish may be taken by longbow and arrow;

(c) the taking of walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified;

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in such waters as may be designated by the department; *or*

(f) the taking of whitefish by nets or traps in the Kootenai River, and in its tributary streams within one mile of the Kootenai River, under such rules and regulations as the fish and game commission may prescribe."

Section 2. Section 87-4-601, MCA, is amended to read:

"**87-4-601. Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsection (2), no person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners thereof;

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(b) the taking of fish by the state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department; *or*

(d) the taking of whitefish by nets or traps in the Kootenai River, and in its tributary streams within one mile of the Kootenai River, under such rules and regulations as the fish and game commission may prescribe."

Approved March 29, 1983.

CHAPTER NO. 268

AN ACT DELETING THE REQUIREMENT THAT THE FUND BALANCE IN THE MOTOR VEHICLE RECORDING ACCOUNT BE DEPOSITED IN THE GENERAL FUND; AMENDING SECTION 61-3-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-108, MCA, is amended to read:

"**61-3-108. Disposition of fees — use.** (1) All fees payable to the division shall be deposited in a motor vehicle recording account of the earmarked revenue fund.

(2) Funds deposited in the motor vehicle recording account of the earmarked revenue fund may be expended for the following purposes:

(a) to pay the salaries and operating expenses of the division, including the manufacture and delivery of license plates;

(b) to fund the forensic science division of the department of justice;

(c) to fund the Montana law enforcement academy bureau;

(d) to fund the law enforcement teletype system bureau of the department of justice;

(e) to fund the Montana criminal law information center to the extent that all of the above programs have been previously funded and funds remain available."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

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CHAPTER NO. 269

AN ACT TO GENERALLY REVISE THE UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT TO CONFORM WITH THE UNITED STATES SUPREME COURT DECISION IN TEXAS V. NEW JERSEY, 379 US 670, AND WITH CURRENT APPLICABLE FEDERAL STATUTES; AMENDING SECTIONS 70-9-101, 70-9-102, 70-9-301, 70-9-302, 70-9-307, 70-9-314, AND 70-9-316, MCA; REPEALING SECTION 70-9-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-9-101, MCA, is amended to read:

"70-9-101. Short title. Parts 1 through 3 of this chapter may be cited as the "Uniform Unclaimed Property Act"."

Section 2. Section 70-9-102, MCA, is amended to read:

"70-9-102. Definitions. As used in parts 1 through 3, unless the context otherwise requires, the following definitions apply:

(1) "Banking organization" means any bank, national bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

(2) "Business association" means any corporation, other than a public corporation, joint-stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Department" means the department of revenue provided for in 2-15-1301.

(4) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company engaged in business in this state.

(5) "Holder" means any person in possession of property subject to parts 1 through 3 belonging to another or who is trustee in case of a trust or is indebted to another on an obligation subject to parts 1 through 3.

(6) "Intangible property" includes:

(a) money, checks, drafts, deposits, interest, dividends, and income;

(b) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

(c) stocks and other intangible ownership interests in business associations;

(d) money deposited to redeem stocks, bonds, coupons, and other securities or to make distributions;

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(e) amounts due and payable under the terms of insurance policies; and

(f) amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(7) "Last-known address" means a description, in the records of the holder, of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(8) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(9) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action or any person having a legal or equitable interest in property subject to parts 1 through 3 or his legal representative.

(10) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(11) "Utility" means any person who owns or operates within this state for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas."

Section 3. **General rules for taking custody of intangible unclaimed property.** (1) Unless otherwise provided by law, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under part 2 are satisfied and:

(a) the last-known address of the apparent owner, as shown on the records of the holder, is in this state;

(b) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last-known address of the person entitled to the property is in this state;

(c) the records of the holder do not reflect the last-known address of the apparent owner and it is established that:

(i) the last-known address of the person entitled to the property is in this state; or

(ii) the holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property;

(d) the last-known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide by law for the

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escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(e) the last-known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(f) the transaction out of which the property arose occurred in this state; and

(i) (A) the last-known address of the apparent owner or other person entitled to the property is unknown; or

(B) the last-known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; and

(ii) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

(2) No sum payable on a traveler's check, money order, or similar written instrument, other than a third-party bank check, may be subjected to the custody of this state as unclaimed property unless:

(a) the records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in this state;

(b) the issuer has its principal place of business in this state and the records of the issuer do not show the state in which the traveler's check, money order, or similar written instrument was purchased; or

(c) the issuer has its principal place of business in this state, the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased, and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

Section 4. **Gift certificates and credit memos.** (1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than 7 years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

Section 5. **Service, handling, maintenance, or other charge or fee — deduction.** (1) No service, handling, maintenance, or other charge or fee of any kind may be deducted or withheld from any property subject to escheat under this chapter unless specifically permitted by this chapter.

(2) Even when specifically permitted by this chapter, such charges or fees may not be excluded, withheld, or deducted from property subject to

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this chapter if, under its normal procedure, the holder would not have excluded, withheld, or deducted such charges or fees had the property been claimed by the owner prior to being reported or remitted to the department.

Section 6. Section 70-9-301, MCA, is amended to read:

"70-9-301. Report of abandoned property — duty to prevent abandonment prior to filing. (1) Every person holding moneys or other property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to the department as hereinafter provided.

(2) The report shall be verified and shall include:

(a) except with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of $10 or more presumed abandoned under parts 1 through 3;

(b) in case of unclaimed moneys of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. Items of value under $10 each may be reported in aggregate.

(d) the date when the property became payable, demandable, or returnable and the date of the last transaction with the owner with respect to the property; and

(e) other information which the department prescribes by rule as necessary for the administration of parts 1 through 3.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1 every 3 years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations, and cooperatives shall be filed before May 1 of each year as of December 31 next preceding. The department may request that any other reports be filed each year. The department may postpone the reporting date upon written request by any person required to file a report. The department shall furnish forms for this report.

(5) *Not more than 120 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under parts 1 through 3 shall send written notice to the apparent owner at his last-known address informing him that the holder is in possession of property subject to this chapter if:*

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(a) the holder has in his records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by the statute of limitations; and

(c) the property has a value of $100 or more.

(6) Verification if made by a partnership shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer."

Section 7. Section 70-9-302, MCA, is amended to read:

"70-9-302. Notice of property presumed abandoned — publication — mail. (1) *The department shall publish notice of property presumed abandoned not later than March 1 after the report required by 70-9-301 is due or, in the case of property reported by life insurance corporations, banking and financial organizations, and cooperatives, August 1 of the year the report is due. The notice must be published* at least once *a* week for 2 *consecutive* weeks in *a* newspaper of general circulation in the county in this state in which is located the *last-known* address of any person to be named in the notice. If no address is listed or the address is outside *the* state, the notice *must* be published in the county in which the holder of the property has *its* principal place of business within this state.

(2) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property" and shall contain:

(a) the names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified;

(b) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the department; *and*

(c) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the department to whom all further claims must thereafter be directed.

(3) The department is not required to publish in such notice any item of less than *$100* unless the department considers such publication to be in the public interest.

(4) This section is not applicable to sums payable on travelers' checks or money orders presumed abandoned under 70-9-201."

Section 8. Section 70-9-307, MCA, is amended to read:

"70-9-307. Period of limitations not to prevent presumption or affect duties — limitation on department action. *(1)* The expiration of any period of time specified by statute or court order during which

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an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property shall not prevent the money or property from being presumed abandoned property or affect any duty to file a report required by parts 1 through 3 or to pay or deliver abandoned property to the department.

(2) No action or proceeding may be commenced by the department with respect to any duty of a holder under parts 1 through 3 more than 10 years after the duty arose."

Section 9. Section 70-9-314, MCA, is amended to read:

"70-9-314. Records requirements — examination. *(1) Every holder required to file a report under 70-9-301 concerning any property for which it has obtained the last-known address of the owner shall maintain a record of the name and last-known address of the owner for 10 years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2).*

(2) Any business association that sells its travelers' checks, money orders, or similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue, for 5 years after the date the property is reportable.

(3) The department or its designated agent may at reasonable times and upon reasonable notice examine the records of any person *who it has reason to believe may be holding unclaimed property.* In addition, the department shall, in the course of conducting an investigation, examination, or audit under Title 15, identify any abandoned property which is subject to parts 1 through 3.

(4) The commissioner of insurance shall, in the course of conducting an investigation, examination, or audit under Title 33, identify any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department.

(5) The department of commerce shall, in the course of conducting an investigation, examination, or audit under Title 32, identify any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department."

Section 10. Section 70-9-316, MCA, is amended to read:

"70-9-316. Penalties. (1) Any person who willfully fails to render any report or perform other duties required under parts 1 through 3 shall be punished by a fine of $50 for each day such report is withheld but not more than $1,000.

(2) Any person who willfully refuses to pay or deliver abandoned property to the department of revenue as required under parts 1 through 3 shall be punished by a fine of not less than $100 or more than $1,000 or imprisonment for not more than 6 months, or both, in the discretion of the court.

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(3) A person who fails to pay or deliver property within the time prescribed in parts 1 through 3 may be required to pay to the department interest at the rate of 1% a month or fraction thereof on the property or value thereof from the date the property should have been paid or delivered until it is paid or delivered."

Section 11. **Interstate agreements and cooperation.** (1) The department may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The department may require the reporting of information needed to enable compliance with agreements made pursuant to this section.

(2) To avoid conflicts between the department's procedures and the procedures of administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act, the department, as far as is consistent with the purposes, policies, and provisions of this chapter, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in such other jurisdictions.

Section 12. **Joint and reciprocal actions with other states.** (1) The department may join with other states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(2) At the request of another state, the attorney general of this state may bring an action in the name of the department of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(3) The department may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state. This state shall pay all expenses, including attorney fees, in any action under this subsection. The department may agree to pay the person bringing the action attorney fees based in whole or in part on a percentage of the value of any property recovered in the action. No expenses paid pursuant to this subsection may be deducted from the amount that is subject to the claim by the owner under this chapter.

Section 13. **Repealer.** Section 70-9-103, MCA, is repealed.

Section 14. **Codification instruction.** Sections 3 through 5, 11, and 12 are intended to be codified as an integral part of Title 70, chapter 9, and the provisions of Title 70, chapter 9, apply to sections 3 through 5, 11, and 12.

Section 15. **Effective date.** This act is effective July 1, 1983.

Approved March 23, 1983.

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CHAPTER NO. 270

AN ACT TO AMEND SECTION 20-15-404, MCA, TO PROVIDE THAT THE PROVISIONS OF SECTION 20-9-209, MCA, RELATING TO LAPSE OF BUDGETED APPROPRIATIONS AND PROVISIONS FOR UNPAID CLAIMS DO NOT APPLY TO COMMUNITY COLLEGE DISTRICTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-15-404, MCA, is amended to read:

"20-15-404. Trustees to adhere to certain other laws. Unless the context clearly indicates otherwise, the trustees of a community college district shall:

(1) adhere to the teachers' retirement provisions of Title 19, chapter 4, as amended;

(2) adhere to the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212, as amended;

(3) adhere to the school property provisions of 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636, as amended;

(4) adhere to the adult education provisions of 20-7-701 through 20-7-712, as amended;

(5) adhere to the administration of finances provisions of 20-9-115, 20-9-134, subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165, 20-9-207, *20-9-208*, 20-9-210, 20-9-215, and 20-9-221 through 20-9-224, as amended;

(6) adhere to the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465, as amended;

(7) adhere to the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511, as amended;

(8) adhere to the educational cooperative agreements provisions of 20-9-701 through 20-9-704, as amended;

(9) adhere to the school elections provisions of Title 20, chapter 20, as amended;

(10) adhere to the students' rights provisions of 20-25-511 through 20-25-516, as amended; and

(11) adhere to the health provisions of 50-1-206."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

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CHAPTER NO. 271

AN ACT TO TRANSFER THE BOARD OF VETERANS' AFFAIRS FROM THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE DEPARTMENT OF MILITARY AFFAIRS; RENUMBERING SECTION 2-15-2202, MCA; AMENDING SECTIONS 2-8-103 AND 10-2-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board transferred — section renumbered.** The allocation of the board of veterans' affairs for administrative purposes is transferred from the department of social and rehabilitation services to the department of military affairs. Section 2-15-2202, MCA, is intended to be renumbered and recodified as an integral part of Title 2, chapter 15, part 12.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

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(c) board of horseracing, department of commerce, created by 2-15-1881;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of commerce, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(j) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

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(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of *military affairs*, created by *[*2-15-2202 *as renumbered pursuant to section 1]*."

Section 3. Section 10-2-101, MCA, is amended to read:

"**10-2-101. Definition.** Unless the context requires otherwise, in this part "board" means the board of veterans' affairs provided for in *[*2-15-2202 *as renumbered pursuant to section 1]*."

Approved March 29, 1983.

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CHAPTER NO. 272

AN ACT TO COMPLY WITH FEDERAL REQUIREMENTS FOR DISQUALIFICATION FOR FAILING TO SEEK WORK AND TO PROVIDE FOR FEDERAL MINIMUM DISQUALIFICATIONS IN THE CASE OF EXTENDED BENEFITS; AMENDING SECTION 39-51-2508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2508, MCA, is amended to read:

"39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds that with respect to such week:

(a) he is an exhaustee, as defined in 39-51-2501(6);

(b) he is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if he is disqualified, he satisfies the requirements for requalification in that part; and

(c) he has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(b), an individual is disqualified for extended benefits if he fails to *seek* work. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless he has earned at least eight times the weekly benefit amount after the date of such disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), requalifies for regular benefits may not be paid extended benefits unless he has earned at least six times the weekly benefit amount.

(5) For the purposes of *determining eligibility for extended benefits*, the department shall, by rule, define the term "suitable work". Such definition shall be in accordance with the definition required by the Omnibus Reconciliation Act of 1980, P.L. 96-499, and as may be amended after March 19, 1981."

Approved March 29, 1983.

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CHAPTER NO. 273

AN ACT AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO BORROW MONEY FROM THE FEDERAL UNEMPLOYMENT TRUST FUND AND PROVIDING FOR THE PAYMENT OF INTEREST ON THE BORROWED MONEY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Advances from federal unemployment trust fund.** (1) The department is authorized to apply for advances on behalf of the state of Montana from its account in the federal unemployment trust fund and to accept responsibility for repayment of such advances in accordance with the conditions specified by congress.

(2) (a) The interest cost, if any, from such advances must be assessed against employers subject to experience rating. Interest cost may not be assessed against state or local government employers covered by 39-51-1212 or against nonprofit organizations making payments in lieu of contributions pursuant to 39-51-1124.

(b) An assessment must be made beginning with the calendar year following the calendar year in which it became necessary to apply for an advance from the federal unemployment trust fund and after the interest charges on the advance have been determined. The rate will be determined by the department based upon the interest charges. This rate must be applied to the employer's taxable wages and be submitted in the same manner as regular contributions but as a separate payment.

(c) The amount received must be deposited in the unemployment insurance account and used to pay interest costs. Any surplus must be used to pay benefits. The department shall maintain separate records of deposits, obligations, and expenditures of all money collected pursuant to this section.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to section 1.

Approved March 29, 1983.

CHAPTER NO. 274

AN ACT ALLOWING SCHOOL BUILDING PLANS AND SPECIFICATIONS TO BE REVIEWED AND APPROVED BY THE GOVERNMENTAL ENTITY HAVING STATE BUILDING CODE ENFORCEMENT JURISDICTION; AMENDING SECTION 20-6-622, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-622, MCA, is amended to read:

"20-6-622. Review and approval of school building plans and specifications. (1) No school building, either publicly or privately owned

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or operated, *in which students are housed or instructed may* be built, enlarged, *or* remodeled until the plans and specifications for such construction have been submitted to and approved by the department of administration *or a municipality or county with a building code adopted as provided in 50-60-301.*

(2) The plans and specifications *required in subsection (1)* shall show in detail the proposed construction of the building and shall illustrate and indicate conformity with the *applicable building code.*

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications *required in subsection (1)* to assist the districts in designing facilities for optimum utilization."

Approved March 29, 1983.

CHAPTER NO. 275

AN ACT REPEALING SECTION 87-3-502, MCA, WHICH REQUIRES THE TAGGING OF MARTEN PELTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 87-3-502, MCA, is repealed.

Approved March 29, 1983.

CHAPTER NO. 276

AN ACT AMENDING SECTION 53-2-602, MCA, TO DELETE THE PROVISION THAT EXCLUDES CASUAL, PERIODIC, OR OCCASIONAL INCOME IN DETERMINING GRANT AMOUNTS FOR PUBLIC ASSISTANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-602, MCA, is amended to read:

"53-2-602. Grant amount based on need. Subject to review by the county board, the staff of the county department shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance with the rules and standards of assistance prescribed by the department of social and rehabilitation services."

Approved March 29, 1983.

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CHAPTER NO. 277

AN ACT TO GENERALLY REVISE LANGUAGE IN EXISTING CODE SECTIONS TO CONFORM TO THE TREASURY FUND STRUCTURE TERMINOLOGY AS ESTABLISHED BY CHAPTER 28, LAWS OF 1981, AS REQUIRED BY CHAPTER 28, SECTION 5, LAWS OF 1981; INSTRUCTING THE CODE COMMISSIONER TO MAKE THE CHANGES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Earmarked revenue funds renamed.** (1) Wherever in the following code sections the term "earmarked revenue" appears, it is changed to "a state special revenue": 7-14-303, 7-21-2105, 13-37-304, 15-1-501, 15-10-105, 15-24-923, 15-24-924, 15-24-1001, 15-70-101, 15-70-102, 15-70-312, 15-71-104, 16-1-404, 16-1-410, 16-1-411, 16-11-124, 17-3-201, 18-6-103, 19-11-513, 19-11-514, 19-11-606, 19-13-1006, 20-7-501, 20-9-331, 20-9-333, 20-9-342, 20-9-343, 20-9-352, 22-2-107, 22-2-109, 23-1-105, 23-2-512, 23-2-611, 23-2-612, 23-2-615, 23-2-616, 23-2-619, 23-2-644, 23-4-305, 37-3-314, 37-4-202, 37-4-327, 37-6-305, 37-7-324, 37-8-431, 37-8-432, 37-9-306, 37-10-203, 37-10-313, 37-11-203, 37-11-304, 37-12-308, 37-14-311, 37-15-310, 37-16-408, 37-17-307, 37-18-308, 37-20-302, 37-30-201, 37-31-324, 37-32-305, 37-40-305, 37-42-309, 37-43-202, 37-43-303, 37-50-315, 37-51-206, 37-51-207, 37-51-208, 37-51-311, 37-60-313, 37-65-304, 37-65-307, 37-66-307, 37-67-317, 37-68-313, 37-69-308, 39-71-205, 44-1-501, 44-3-302, 50-15-111, 50-60-508, 50-71-325, 53-2-205, 53-24-108, 60-3-303, 61-3-102, 61-3-103, 61-3-108, 61-3-204, 61-3-321, 61-3-406, 61-3-502, 61-8-204, 61-10-126, 61-10-148, 61-10-226, 61-12-701, 61-12-703, 67-1-301, 67-1-303, 69-1-223, 70-2-113, 75-1-205, 75-2-211, 75-2-212, 75-2-427, 75-6-104, 75-15-122, 75-20-112, 75-20-215, 75-20-408, 76-4-1108, 76-4-1212, 76-4-1213(3), 76-15-530, 76-16-106(2), 77-1-604, 77-5-204, 80-4-119, 80-4-307, 80-7-704, 80-9-207, 80-10-104, 80-10-207, 80-10-208(5), 81-1-103, 81-2-102(1)(c), 81-3-107, 81-3-205, 81-3-210, 81-3-211, 81-3-214, 81-3-216, 81-3-222, 81-3-231, 81-4-606, 81-7-104, 81-7-105, 81-7-118, 81-7-119, 81-7-120, 81-7-122, 81-7-504, 81-8-256, 81-8-304, 81-9-113, 81-9-411, 81-23-202, 81-23-204, 81-23-403, 82-4-311, 82-11-135, 85-2-124, 85-2-241, 85-2-242, 85-2-318, 85-3-213, 87-1-104, 87-1-201, 87-1-206, 87-1-405, 87-2-113, 87-2-204, 87-4-104, 87-4-602, 87-4-808, 87-5-509(3), 90-4-103, 90-6-211, 90-6-304.

(2) Wherever in 2-15-3005 the term "earmarked revenue" appears, it is changed to "enterprise".

(3) Wherever in 85-1-332 the word "earmarked" appears, it is changed to "state special revenue".

Section 2. **Federal and private revenue funds renamed.** (1) Wherever in the following code sections the term "the federal and private revenue fund" appears, it is changed to "the other special revenue funds": 17-3-1003, 76-13-209, 80-11-203, 80-11-210, 80-11-223, 80-11-310, 81-8-610, 81-8-805.

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(2) Wherever in 18-2-107 the term "federal and private revenue" appears, it is changed to "capital projects".

(3) Whenever in 39-51-406 the term "federal and private revenue" appears, it is changed to "federal special revenue".

(4) Whenever in 53-24-104 the term "the federal and private revenue fund" appears, it is changed to "the federal special revenue fund or the other special revenue funds".

Section 3. **Revolving funds renamed.** (1) Wherever in the following code sections the term "revolving fund" appears, it is changed to "a state special revenue fund": 1-11-301, 2-4-312, 2-4-313, 2-18-403, 5-11-209, 5-13-403, 17-8-305, 61-12-504.

(2) Wherever in the following code sections the term "revolving fund" appears, it is changed to "enterprise fund": 2-7-503, 2-7-516, 2-7-518, 16-2-108, 20-3-108, 20-7-201, 67-11-222.

(3) Wherever in the following code sections the term "revolving fund" appears, it is changed to "enterprise or internal service fund": 18-6-101, 18-6-103.

(4) Wherever in 18-5-203 the term "revolving fund" appears, it is changed to "internal service fund".

Section 4. **Code commissioner instruction.** The code commissioner shall change the MCA sections listed in sections 1 through 3 in accordance with this act and may make incidental changes as necessary to reflect the intent of these sections as amended by this act without changing the meaning.

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved March 29, 1983.

CHAPTER NO. 278

AN ACT TO PROVIDE THAT ALL TRAILERS LICENSED FOR A GROSS WEIGHT OF 18,000 POUNDS OR LESS ARE CLASS EIGHT PROPERTY FOR THE PURPOSE OF TAXATION AND THAT ALL TRAILERS LICENSED FOR A GROSS WEIGHT EXCEEDING 18,000 POUNDS ARE CLASS TEN PROPERTY; AMENDING SECTIONS 15-6-138 THROUGH 15-6-140, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

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(b) all mining machinery, fixtures, equipment, tools, and supplies except:

(i) those included in class five; and

(ii) coal and ore haulers;

(c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

(d) motorcycles;

(e) watercraft;

(f) *all trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax*;

(g) aircraft;

(h) all-terrain vehicles;

(i) harness, saddlery, and other tack equipment; and

(j) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value."

Section 2. Section 15-6-139, MCA, is amended to read:

"15-6-139. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) buses and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ½ tons;

(b) truck toppers weighing more than 300 pounds;

(c) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(d) x-ray and medical and dental equipment; and

(e) citizens' band radios and mobile telephones.

(2) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(3) Class nine property is taxed at 13% of its market value."

Section 3. Section 15-6-140, MCA, is amended to read:

"15-6-140. Class ten property — description — taxable percentage. (1) Class ten property includes:

(a) radio and television broadcasting and transmitting equipment;

(b) cable television systems;

(c) coal and ore haulers;

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(d) trucks having a rated capacity of more than 1 ½ tons, including those prorated under 15-24-102;

(e) *all trailers exceeding 18,000 pounds maximum gross loaded weight,* including those prorated under 15-24-102, and except those subject to a fee in lieu of property tax;

(f) theater projectors and sound equipment; and

(g) all other property not included in the preceding nine classes except that property subject to a fee in lieu of a property tax.

(2) Class ten property is taxed at 16% of its market value."

Section 4. **Effective date.** This act is effective July 1, 1983.

Approved March 29, 1983.

CHAPTER NO. 279

AN ACT TO AMEND SECTIONS 49-2-303 AND 49-3-103, MCA, TO ALLOW AN EXCEPTION TO THE PROHIBITION AGAINST EMPLOYMENT DISCRIMINATION ON THE BASIS OF MARITAL STATUS IN CERTAIN CIRCUMSTANCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-303, MCA, is amended to read:

"49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, *marital status,* or sex when the reasonable demands of the position do not require an age, physical or mental handicap, *marital status,* or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, *marital status,* or sex when the reasonable demands of the program do not require an age, physical or mental handicap, *marital status,* or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin

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or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed."

Section 2. Section 49-3-103, MCA, is amended to read:

"49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

(1) from enforcing a differentiation based on *marital status*, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(3) from discharging or otherwise disciplining an individual for good cause."

Approved March 29, 1983.

CHAPTER NO. 280

AN ACT PROHIBITING A PUBLIC EMPLOYEE FROM ACCRUING ANNUAL LEAVE OR SICK LEAVE DURING ANY PERIOD OF LEAVE WITHOUT PAY; AMENDING SECTIONS 2-18-611 AND 2-18-618, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-611, MCA, is amended to read:

"2-18-611. Annual vacation leave. (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. For calculating vacation leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Vacation leave credits earned shall be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

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(2) Seasonal employees shall earn vacation credits. However, such persons must be employed 6 qualifying months before they may use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees do not earn vacation leave credits, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment."

Section 2. Section 2-18-618, MCA, is amended to read:

"2-18-618. Sick leave. (1) Each permanent full-time employee shall earn sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Sick leave credits shall be credited at the end of each pay period. Sick leave credits shall be earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment therefor shall be the responsibility of the agency wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same jurisdiction, he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency shall not be credited

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with any sick leave for which the employee has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section."

Approved March 29, 1983.

CHAPTER NO. 281

AN ACT TO GENERALLY REVISE LANGUAGE IN VARIOUS CODE PROVISIONS IN ORDER THAT REFERENCES TO THE TREASURY FUND STRUCTURE CONFORM TO CHAPTER 28, LAWS OF 1981, AS REQUIRED BY CHAPTER 28, SECTION 5, LAWS OF 1981; AMENDING SECTIONS 2-17-105, 2-18-402, 15-35-108, 15-38-106, 15-38-201, 15-38-202, 16-11-119, 16-11-206, 17-2-102, 17-2-105, 17-6-201, 17-6-203, 17-8-101, 17-8-105, 18-2-103, 20-9-601, 20-10-201, 20-10-203, 20-25-225, 20-26-1105, 39-51-401, 39-51-402, 39-51-404, 39-51-406, 39-51-407, 53-1-302, 53-9-109, 60-11-1207, 67-11-304, 70-9-309, 72-14-210, 72-14-403, 76-4-105, 76-13-114, 76-13-503, 77-1-602, 77-6-203, 80-2-103, 80-2-222, 80-2-228, 80-2-232, 80-6-1109, 80-11-207, 81-1-104, 87-1-601, 87-1-602, AND 90-6-202, MCA; INSTRUCTING THE CODE COMMISSIONER TO MAKE THE NECESSARY CHANGES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-105, MCA, is amended to read:

"2-17-105. Insurance on state buildings — use of proceeds — building replacement. (1) Moneys received by the state as indemnification for damage to state buildings, except buildings procured by the department of highways by purchase or condemnation for right-of-way purposes, shall be deposited in *a state special revenue* fund.

(2) These moneys may only be:

(a) used to repair the damaged property;

(b) used to replace the damaged property, subject to the limitations in subsection (3) of this section; or

(c) transferred to the fund and account from which the premiums were paid on the policy covering the building. Moneys transferred in this manner may not be spent by the institution or agency having custody of the damaged property but shall be available for future legislative appropriation. If the moneys are not spent or committed within 2 years from the time they are received, they shall automatically revert to the fund and account from which the premiums were paid.

(3) If an insured building is totally destroyed or so badly damaged that repair is impractical, the governing board or officer responsible for the

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building may authorize any moneys received by the state as indemnification for property damage to be used to replace the building only if the proposed replacement is designed to be used for the same general purposes as the damaged or destroyed building. If the governing board or officer determines that the building should not be replaced, any moneys received by the state as indemnification for property damage over and above any outstanding debt on the building shall be transferred as provided in subsection (2)(c) of this section."

Section 2. Section 2-18-402, MCA, is amended to read:

"2-18-402. Payroll agency fund — auditor to determine disbursements and transfers. (1) *A fund* in the *agency* fund *type* of the state treasury is hereby created, to be known as the state payroll *agency fund*, which *fund* may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld therefrom, pursuant to law.

(2) The amount to be disbursed from the state payroll *agency fund* at any time shall be determined by the state auditor and, on his order, shall be transferred forthwith from the fund, account, and appropriation otherwise properly chargeable therewith to the state payroll *agency fund*."

Section 3. Section 15-35-108, MCA, is amended to read:

"15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2 ½% until December 31, 1979, and thereafter 4 ½% to *a state special* revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26 ½% until July 1, 1979, and thereafter 37 ½% to *a state special* revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to *a state special* revenue fund to the credit of the coal area highway improvement account;

(e) 10% to *a state special* revenue fund for state equalization aid to public schools of the state;

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(f) 1% to *a state special* revenue fund to the credit of the county land planning account;

(g) 1 ¼% to the credit of the renewable resource development bond *fund*;

(h) 5% to *a nonexpendable trust* fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired;

(i) 1% to *a state special* revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(j) ½ of 1% to *a state special* revenue fund for conservation districts;

(k) 1 ¼% to the *debt service* fund *type* to the credit of the water development *debt service fund*;

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 4. Section 15-38-106, MCA, is amended to read:

"15-38-106. Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter shall be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time that the statement of yield is filed with the department.

(2) The department shall deposit the proceeds of the tax in the resource indemnity trust *fund* of the *nonexpendable trust* fund *type*. Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(3) The department shall examine each of the statements and compute the taxes thereon, and the amount computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer making the statement for the year for which the statement is filed. If the tax found to be due is greater than the amount paid, the excess shall be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 5. Section 15-38-201, MCA, is amended to read:

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"15-38-201. Creation of resource indemnity trust fund. For the purpose of carrying out this chapter, there is a resource indemnity trust *fund* in the *nonexpendable trust* fund *type*. The resource indemnity *fund* shall be credited with all moneys received as herein provided."

Section 6. Section 15-38-202, MCA, is amended to read:

"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All moneys paid into the resource indemnity trust *fund* shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust *fund* shall annually be added thereto until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the account reaches $100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the account may never be less than $100 million.

(2) Beginning in fiscal year 1982, provided the amount in the resource *indemnity* trust *fund* is greater than $10 million, 30% of the interest income of the resource indemnity trust *fund* must be allocated to the water development *state special revenue* account created by 85-1-604."

Section 7. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes — retirement of bonds. All moneys collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by said section, shall be paid to the state treasurer and deposited as follows: 73% in the long-range building program *fund* in the *debt service* fund *type*, and 27% in the long-range building program *fund* in the *capital projects* fund *type*."

Section 8. Section 16-11-206, MCA, is amended to read:

"16-11-206. Wholesaler's discount — disposition of taxes. The taxes specified in this part that are paid by the wholesaler shall be paid to the department in full less a 5% defrayment for his collection and administrative expense and shall be deposited by the department in the long-range building *program debt service* fund. Refunds of the tax paid shall be made as provided in 15-1-503 in cases where the tobacco products purchased become unsalable."

Section 9. Section 17-2-102, MCA, is amended to read:

"17-2-102. Fund structure. (1) There are in the state treasury only the following *fund categories and types*:

(a) governmental *fund category*, which *includes*:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue *fund type*, which *accounts* for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes.

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The financial activities of the special revenue fund type shall be subdivided for operational purposes into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(C) The other special revenue funds consist of money deposited in the state treasury from private sources, including trust income, that is used for the operation of state government and money used to defray reimbursable expenditures.

(iii) the capital projects *fund type*, which *accounts* for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service *fund type*, which *accounts* for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) proprietary *fund category*, which *includes*:

(i) the enterprise *fund type*, which *accounts* for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service *fund type*, which *accounts* for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary *fund category*, which *includes* trust and agency *fund types* used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include *the*:

(i) expendable trust *fund type*;

(ii) nonexpendable trust *fund type*;

(iii) pension trust *fund type*; and

(iv) agency *fund type.*

(d) the university funds, which include:

(i) the university current fund, which accounts for moneys deposited in the state treasury which are used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the university current fund shall be subdivided, for operation purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the university current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the university current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the university student loan fund, which accounts for moneys deposited in the state treasury which may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system;

(iii) the university endowment fund, which accounts for moneys deposited in the state treasury by the Montana university system wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the university annuity and life income fund, which accounts for moneys deposited in the state treasury by the Montana university system under an agreement whereby the moneys are made available on condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

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(v) the university plant fund, which accounts for those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the university agency fund, which accounts for moneys deposited in the state treasury wherein the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1) of this section, there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the university funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section; and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the university funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section."

Section 10. Section 17-2-105, MCA, is amended to read:

"17-2-105. Maintenance of fund and account records and interfund loans. (1) The state treasurer shall record receipts and disbursements for treasury funds and shall maintain fund records in such a manner as to reflect the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual *funds* within the *debt service, agency, capital projects, and trust fund types* in such a manner as to reflect the total cash and invested balance of each *fund.* When necessary to meet federal or other requirements that moneys be segregated in the treasury, the state treasurer may establish *accounts, funds, or* subfunds within any *fund type* listed in 17-2-102.

(2) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, providing that the loan is recorded in the state accounting records. Such loan shall bear no interest, and no fund shall be so impaired that all proper demands thereon cannot be met."

Section 11. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program — general provisions. (1) The uniform investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments in accordance with the rules provided in this chapter and with that degree of judgment and care, under circumstances from time to time prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable

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safety of their capital as well as the probable income to be derived, and preservation of purchasing power of capital during periods of sustained high monetary inflation.

(2) All state funds shall be invested and reinvested in securities enumerated in 17-6-211 to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) The board of investments has the sole authority to invest state funds. No other agency may invest state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(4) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made; and

(d) prepare the claim to pay for the investment.

(5) The board of investments may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(6) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund and of the participation of each treasury fund account therein and shall make from time to time such reports with reference thereto as may be directed by the board of investments.

(7) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the *nonexpendable trust funds* shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds."

Section 12. Section 17-6-203, MCA, is amended to read:

"17-6-203. Separate investment funds. Separate investment funds shall be maintained as follows:

(1) the *nonexpendable trust funds*, including all public school funds and funds of the Montana university system and other state institutions

of learning referred to in sections 2 and 10, Article X, of the 1972 Montana constitution and all money referred to in 17-2-102(8). The principal and any part thereof of each and every *fund* constituting the Montana *nonexpendable* trust fund *type* shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular *fund* arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in Title 19, chapter 6;

(b) the public employees' retirement system described in Title 19, chapter 3;

(c) the game wardens' retirement system described in Title 19, chapter 8;

(d) the teachers' retirement system described in Title 19, chapter 4; and

(e) the industrial accident insurance program described in Title 39, chapter 71, part 23;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by 17-2-102;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions.

(5) a fund consisting of coal severance taxes allocated thereto under section 5, Article IX, of the Montana constitution; the principal of this trust fund shall be permanent and invested in the permissible investments enumerated in 17-6-211; in the event the legislature appropriates any part of the principal of this fund by vote of three-fourths of the members of each house, such liquidation may create a gain or loss in the principal; and

(6) such additional investment funds as may be expressly required by law or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

Section 13. Section 17-8-101, MCA, is amended to read:

"17-8-101. Appropriation and disbursement of moneys from the treasury. (1) Moneys deposited in the general fund, the special revenue fund *type*, the enterprise fund *type*, the internal service fund *type*,

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and the capital projects fund *type*, with the exception of refunds authorized in subsection (3), shall be paid out of the treasury only on appropriation made by law.

(2) Moneys deposited in the debt service fund *type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, and agency fund type* may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting such disbursement.

(3) Money paid into the state treasury through error or under circumstances, such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration."

Section 14. Section 17-8-105, MCA, is amended to read:

"17-8-105. Definitions applicable to expenditure limitation. As used in 17-8-106, the following definitions apply:

(1) "Montana total personal income" means the current income from all sources received during a particular period of time by persons residing within Montana as determined by the United States department of commerce or its successor agency.

(2) "State expenditures" means the general fund appropriations, the *special revenue* fund *type* appropriations, and the cash portion of the appropriations in the *capital projects* fund *type*, excluding:

(a) money received from the federal government;

(b) payments of principal and interest on bonded indebtedness;

(c) money paid for unemployment or disability insurance benefits;

(d) money received from the sale of goods or services provided that the purchase of the goods or services is discretionary;

(e) money paid from permanent endowments, constitutional trusts, or pension funds;

(f) proceeds of gifts or bequests made for purposes specified by the donor;

(g) money appropriated for tax relief; and

(h) funds transferred within state government or used to purchase goods for resale."

Section 15. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than $25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

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(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(3) The department of administration is responsible for concurring in construction projects where the proposed cost is less than $25,000 but more than $5,000. Before any contract under this subsection is approved for construction, alteration, or improvement at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than $5,000.

(5) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction *regulation* account in *a state special revenue* fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) and (2) of this section."

Section 16. Section 20-9-601, MCA, is amended to read:

"20-9-601. Public school fund. The public school fund shall be maintained by the state treasurer as a *fund* in the *nonexpendable trust* fund *type*, and the principal amount of such fund shall be irreducible and permanent. The following moneys shall be credited to such fund as an addition to the irreducible and permanent principal amount:

(1) appropriations and donations by the state;

(2) donations and bequests by individuals to the state or schools;

(3) the proceeds of land and other property which revert to the state by escheat and forfeiture;

(4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

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(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) the proceeds of the sale of timber, stone, materials, or other property from school lands other than those granted for specific purposes and all moneys other than rental recovered from persons trespassing on such lands;

(7) the principal of all moneys arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools;

(8) the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) such other moneys as may be provided by the legislature."

Section 17. Section 20-10-201, MCA, is amended to read:

"20-10-201. Acceptance, expenditure, and administration of federal school food services moneys. (1) The superintendent of public instruction is authorized to accept and direct the disbursement of funds appropriated by act of congress and apportioned to the state for use in financing school food services. This authorization shall apply to federal funds available for school food services under the National School Lunch Act (Public Law 396, 79th Congress, chapter 281, 2nd session), Child Nutrition Act of 1966 (Public Law 642, 89th Congress), any amendments to these public laws, and any other public laws enacted to provide assistance for school food services.

(2) The superintendent of public instruction shall deposit all federal funds for school food services with the state treasurer who shall credit such funds to the *agency* fund. Any disbursement of the federal school food services funds shall be directed by the superintendent of public instruction.

(3) The superintendent of public instruction may:

(a) enter into agreements and cooperate with any federal agency, district, or other agency or person, prescribe such regulations, employ such personnel, and take such other action as he may deem necessary to:

(i) provide for the establishment, operation, and expansion of school food services; and

(ii) disburse federal and state funds according to the requirements of federal and state law;

(b) give technical advice and assistance,to any district establishing or operating school food services and assist in the training of personnel for such services;

(c) accept any gift for use in providing school food services;

(d) conduct studies of methods of improving and expanding school food services and appraise the nutritive benefits of school food services.

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(4) The superintendent of public instruction shall report annually to the board of public education on the financial, administrative, and operational phases of school food services."

Section 18. Section 20-10-203, MCA, is amended to read:

"20-10-203. School food commodities. The superintendent of public instruction is authorized to accept food commodities from the federal government and to distribute the food commodities to any district or nonpublic school that contracts for such distribution. The superintendent of public instruction may use for the shipping, handling, and other related costs of distributing the food commodities any funds advanced by legislative appropriation for the commodity *state special revenue* account. Such distribution costs shall be reimbursed by the participating districts and nonpublic schools. Those reimbursements shall be returned to the fund from which payments for the distribution costs were made."

Section 19. Section 20-25-225, MCA, is amended to read:

"20-25-225. Experimental farms. (1) In accordance with the provisions of the Morrill Act of July 2, 1862, the regents shall make available for the purchase of sites or experimental farms from any funds deposited in the Montana *nonexpendable trust* fund credited to the state university through provisions of the Morrill Land Act of 1862, known as the agricultural college Morrill permanent fund, a sum not to exceed 10% of the amount of such fund.

(2) The total amount which may be used for purchase of needed lands for sites or experimental farms may not exceed 10% in the aggregate of the total amount which has now or which may accrue to the credit of the agricultural college Morrill permanent trust fund.

(3) No portion of the moneys apportioned from the endowment funds for the purchase of sites or experimental farms shall be applied directly or indirectly to the purchase, erection, preservation, or repair of any building or buildings.

(4) The regents shall approve purchases of sites or experimental farms, which must be essential for the research programs of the state university."

Section 20. Section 20-26-1105, MCA, is amended to read:

"20-26-1105. Guaranteed student loan account. (1) There is a guaranteed student loan account within the *federal special revenue* fund provided for in 17-2-102.

(2) The board shall credit to the account established in subsection (1) all money designated for the guaranteed student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the guaranteed student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor, as provided for in

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this part, must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the guaranteed student loan account shall not revert to the general fund at the close of any fiscal year."

Section 21. Section 39-51-401, MCA, is amended to read:

"39-51-401. Unemployment insurance fund — establishment and control. There is hereby established separate and apart from all public money or funds of this state *a fund* in the *expendable trust* fund *type* known as the unemployment insurance *fund*, which shall be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in this code means the unemployment insurance *expendable trust* fund. All money in the *fund* shall be mingled and undivided. This *fund* shall consist of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the *fund*;

(3) any property or securities acquired through the use of money belonging to the *fund*;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended."

Section 22. Section 39-51-402, MCA, is amended to read:

"39-51-402. Unemployment insurance fund — state treasurer ex officio custodian — accounts and deposits. (1) The state treasurer is the ex officio treasurer and custodian of the unemployment insurance *fund* and shall administer such *fund* in accordance with the directions of the department and shall issue his warrants upon it in accordance with such regulations as the department shall prescribe. He shall maintain within the *fund* three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment insurance *fund*, upon receipt thereof by the department, must be forwarded to the treasurer who shall immediately deposit it in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the department. After clearance thereof, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit,

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administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium may be paid out of the unemployment insurance *fund*.

(5) The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment insurance *fund* in an amount fixed by the department and in a form prescribed by law or approved by the attorney general. Premiums for the bond shall be paid from the unemployment insurance administration account."

Section 23. Section 39-51-404, MCA, is amended to read:

"39-51-404. Requisition of money from unemployment trust fund for payment of administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the four preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such five 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the fourth preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration *account* but, until expended, shall remain a part of the unemployment insurance fund.

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(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund."

Section 24. Section 39-51-406, MCA, is amended to read:

"39-51-406. Unemployment insurance administration account. (1) There is hereby created an account in the federal *special* revenue fund to be known as the unemployment insurance administration account. All moneys which are deposited, appropriated, or paid into this account are hereby appropriated and made available to the department. All moneys in the account shall be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of such other legislation as shall be specifically delegated to the department for administration by the legislature.

(2) All moneys received and deposited in said account for administration expense from the United States or any agency thereof pursuant to section 302, Title III of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account shall consist of:

(a) all moneys received from the United States or any agency thereof pursuant to section 302, Title III of the Social Security Act, as amended;

(b) all moneys appropriated by the state from the general fund for the purpose of administering this chapter;

(c) all interest and penalties collected on past due contributions as provided by 39-51-1301; and

(d) all moneys, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency thereof;

(ii) this state or any agency thereof;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 shall remain part of the unemployment insurance *fund* and shall be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. Any balance in this

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account shall not lapse at any time, but shall be continuously available to the department for the expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment insurance *fund* under 39-51-402 shall be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code shall be taken to mean the unemployment insurance administration account in the federal *special* revenue fund."

Section 25. Section 39-51-407, MCA, is amended to read:

"39-51-407. Reimbursement of fund by state. (1) This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received after July 1, 1941, from the United States or any agency thereof under Title III of the Social Security Act, any unencumbered balances in the unemployment insurance administration *account* as of that date, any money thereafter granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the provisions of the Wagner-Peyser Act which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the proper administration of this chapter. Such money shall be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature the amount required for such replacement.

(2) This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act."

Section 26. Section 53-1-302, MCA, is amended to read:

"53-1-302. Disposition of receipts from sale of goods. Receipts from the sale of goods produced or manufactured by an institution shall be deposited in the *internal service* fund for the use of the industries program of the institution. At the end of each biennium, all unobligated funds over a $50,000 ending-fund balance, except for those funds reserved for equipment replacement as determined by an equipment replacement schedule, shall revert to the state general fund."

Section 27. Section 53-9-109, MCA, is amended to read:

"53-9-109. Crime victims compensation account. There is a crime victims compensation account in *a state special revenue* fund. There

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shall be paid into this account 18% of the fines assessed and bails forfeited on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61, that are a result of citations or tickets issued by the highway patrol."

Section 28. Section 60-11-1207, MCA, is amended to read:

"60-11-1207. Bond accounts — appropriation. (1) There is a railroad rolling stock account in *a state special revenue* fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rolling stock account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rolling stock *debt service* fund *as* provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rolling stock *fund*, and all money deposited in the *fund* is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1206, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts, notwithstanding the provisions of subsections (1) and (2)."

Section 29. Section 67-11-304, MCA, is amended to read:

"67-11-304. Debt service fund. An airport authority may create a *debt service* fund and accumulate therein the sum of $5 million together with interest thereon for the use, repairs, maintenance, and capital outlays of an airport."

Section 30. Section 70-9-309, MCA, is amended to read:

"70-9-309. Deposit of moneys — record — deduction of costs. (1) All moneys received under parts 1 through 3, including the proceeds from the sale of abandoned property under 70-9-308, shall forthwith be deposited by the department of revenue with the state treasurer for credit to the public school *nonexpendable trust fund* of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding $25,000 from which he shall make prompt payment of claims allowed by the department as hereinafter provided.

(2) Before making the deposit the department shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant and, with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(3) Before making any deposit to the credit of the public school *nonexpendable trust fund*, the department may deduct:

(a) any costs in connection with sale of abandoned property;

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(b) any costs of mailing and publication in connection with any abandoned property; and

(c) reasonable service charges."

Section 31. Section 72-14-210, MCA, is amended to read:

"72-14-210. Agency fund moneys to be held in trust — deposit in public school nonexpendable trust fund. Moneys and properties placed in the agency fund shall be held in trust for a period of 5 years prior to deposit in the public school *nonexpendable* trust fund by the state treasurer; such trust being for the benefit of persons claiming property pursuant to part 3 of this chapter. Such a claim may be brought for an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state."

Section 32. Section 72-14-403, MCA, is amended to read:

"72-14-403. Deposit of unclaimed property in state treasury — escheat. (1) All money or other property distributed in the administration of an estate of a decedent or as the subject of a trust and deposited before or after July 1, 1947, with the county treasurer to the credit of the distributee or beneficiary and any money remaining on deposit to the credit of an estate after final distribution must be delivered into the state treasury for deposit in the agency fund by the county treasurer upon the expiration of 1 year from the day of such deposit.

(2) Money or other property so deposited in the state treasury, if not claimed by the person or persons entitled thereto by bringing an action as provided in part 3 of this chapter, shall escheat to the state of Montana and be placed in the public school *nonexpendable* trust fund as provided therein."

Section 33. Section 76-4-105, MCA, is amended to read:

"76-4-105. Lot fees. (1) The department shall adopt reasonable rules setting forth fees, not to exceed $30 per parcel, for services rendered in the review of plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in *a state special revenue* fund provided for in 17-2-102. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after

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receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.

(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities."

Section 34. Section 76-13-114, MCA, is amended to read:

"76-13-114. Disposition of fines. Fines collected in a court of the state under this part or part 2 shall be transferred to the state treasurer for deposit in the *agency* fund. Whenever a person is convicted in any court of a violation of this part or part 2, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected shall be deposited by the court with the proper county treasurer for the benefit of the county."

Section 35. Section 76-13-503, MCA, is amended to read:

"76-13-503. Application for license — fee. (1) Whenever a person, firm, or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state, that person, firm, or corporation shall apply to the department in writing for a license to operate the portable sawmill. The application shall include the name of the person, firm, or corporation contemplating the operation of the sawmill; the location thereof by section, township, and range numbers; the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting; and the approximate date desired for the commencement of the operation.

(2) The application shall be accompanied by the payment of a fee of $2, which is fixed as the license fee for the operation of any portable sawmill, to be credited to the *agency* fund."

Section 36. Section 77-1-602, MCA, is amended to read:

"77-1-602. Definition of terms. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in *a state special* revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana *nonexpendable* trust fund *type*."

Section 37. Section 77-6-203, MCA, is amended to read:

"77-6-203. Bid deposit. (1) A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to 20% of the annual rental bid in the case of grazing land and an amount equal to $1 per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis.

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(2) The department shall retain the deposit of the successful bidder, apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder. The department shall return the deposits of the unsuccessful bidders.

(3) If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the department to the credit of the proper interest and income account in the *agency* fund."

Section 38. Section 80-2-103, MCA, is amended to read:

"80-2-103. Administration of trust assets. Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture under 80-2-102 shall be received by the department and paid by it to the state treasurer for deposit in the *expendable trust* fund and used for expenditure or obligation by the department for the purposes of 80-2-102 or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture, subject to Public Law 499."

Section 39. Section 80-2-222, MCA, is amended to read:

"80-2-222. Board to establish amount of levy — disposition of funds. (1) The board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the state, which rates shall be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available. The highest of these rates shall be the same as the maximum established herein and the lowest may not be less than $1.20 per acre on lands sown to grain crops and a proportionate amount on lands sown to hay crops.

(2) Notice of the various rates established for any year shall be plainly printed on the application for hail insurance, and in any year when the requirements of the hail insurance law as herein provided do not require a levy of the maximum rates as established, then the rates for the year shall be determined and levied by the board of hail insurance for each of the various districts as established, in such proportions as will in its judgment be fair and equitable.

(3) In making the levy provided in this section and 80-2-223, the board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants, and losses as the same shall be settled and adjusted by the board, including the losses sustained in any prior year or years under the hail insurance law during or subsequent to the year 1919 that have not been paid.

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(4) If at the end of any hail insurance season the board determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund the excess to the farmers insured for the year, on a pro rata or percentage basis.

(5) The board of hail insurance may direct the board of investments to invest funds from the *expendable trust* fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the board of hail insurance account in the *expendable trust* fund."

Section 40. Section 80-2-228, MCA, is amended to read:

"80-2-228. Reserve fund. (1) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the levy enough in any year so that such addition to the reserve will exceed 5% of the maximum risk written for that year.

(2) The reserve fund may not exceed $4 million prior to January 1, 1976. On January 1, 1976, and thereafter, the maximum permissible reserve fund shall be established as set forth in subsection (3) of this section.

(3) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount shall be the maximum permissible reserve fund for the next year.

(4) The reserve hereby created shall be deposited in *an expendable trust* fund, and the board is hereby granted the power to draw from its moneys in the fund such amounts as it considers necessary for the purpose of paying costs of administration, interest, and losses.

(5) Whenever there are no unpaid losses for prior years and whenever in any one year the cost of administration, interest, and losses for the current year is less than the sum of 60 cents per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board."

Section 41. Section 80-2-232, MCA, is amended to read:

"80-2-232. State treasurer's duty — warrants — transfers to county and state general fund. (1) The state treasurer shall receive all moneys paid to him under this part and shall place same to the credit of the *expendable trust* fund. All moneys collected by the board shall be deposited in the *expendable trust* fund, and all losses shall be paid from that fund. All other costs are administrative expenses and shall be paid

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from the board's *expendable trust* fund. If registered warrants be presented and there be no money to pay the same, such warrants shall be registered and thereafter bear interest at the rate of 4% per annum until called for payment by the state treasurer.

(2) Upon warrants drawn by order of the board, the state treasurer shall pay out of the board's *expendable trust* fund to the county treasurer of each county where state hail insurance coverage is in force 1% of the gross annual levies made and collected in such county under this part for the use of the county as the board of county commissioners may determine.

(3) Upon authorization from the board of hail insurance, the state treasurer shall transfer out of the board's *expendable trust* fund to the general fund of the state of Montana 2% of the gross annual levies made and collected in the state of Montana."

Section 42. Section 80-6-1109, MCA, is amended to read:

"80-6-1109. Fees to be set by rule — self-supporting program — enterprise fund established. (1) Fees authorized to be charged by this part shall be set by department rule. Such fees shall be designed to reimburse the department for costs incurred in providing services and carrying out its duties under this part. It is the intent of the legislature that department activities under this part be self-supporting.

(2) There is an *enterprise fund* known as the leaf-cutting bee *fund* for use by the department. Fees collected under this part shall be paid into the leaf-cutting bee *fund*."

Section 43. Section 80-11-207, MCA, is amended to read:

"80-11-207. Buyer's delivery of invoice to grower — form — filing of sworn statement — payment of assessment — refund. (1) The purchaser of the wheat or barley at the time of sale or the pledgee, mortgagee, or other lender at the time of the loan or advance shall give separate invoices for each purchase to the grower. The invoices shall be on forms approved by the department and shall show:

(a) the name and address of the grower and seller;

(b) the name and address of the purchaser or the lender;

(c) the number of bushels of wheat or hundredweights of barley sold, mortgaged, or pledged;

(d) the date of the purchase, mortgage, or pledge and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within 20 days after the end of a month in which he purchases a grower's wheat or barley or in which a lender makes a loan or advance on a grower's wheat or barley, a sworn statement of the number of bushels of wheat or hundredweights of barley purchased in Montana or the number of bushels of wheat or hundredweights of barley mortgaged or pledged or otherwise transferred or

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liened as security for a loan during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in 80-11-206 for deposit in the wheat research and marketing account in *the other special revenue funds.*

(3) The statement referred to in subsections (1) and (2) of this section shall be legibly written and shall be entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After 30 days and before 90 days following the deduction of the assessment by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request shall be accompanied by the original invoices received by the grower at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed 2 years after the refund is made. All original invoices shall be returned to the grower with the refund payment."

Section 44. Section 81-1-104, MCA, is amended to read:

"81-1-104. Investment of state special revenue account funds — crediting of investment income. The board may direct the board of investments to invest funds from *state special* revenue accounts of the department pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the *state special revenue* account of the department from which the investment is made."

Section 45. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) All money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in *a state special* revenue fund to the credit of the department. Any money received from federal sources shall be deposited in the federal *special* revenue fund to the credit of the department.

(2) That money shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in *a state special* revenue fund and *the* federal *special* revenue fund.

(4) All money collected or received from fines and forfeited bonds relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department of fish, wildlife, and parks in *a state special* revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and

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game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition shall be deposited in an account within the *nonexpendable trust* fund of the state treasury. The interest derived therefrom, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth herein would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in such violation."

Section 46. Section 87-1-602, MCA, is amended to read:

"87-1-602. Payment of salaries, per diem, and expenses. All salaries, per diem, expenses, and claims incurred by the department or a person appointed or employed by it shall be paid out of fish and game moneys in the general fund, *the* federal *special* revenue fund, *a state special revenue fund,* or other applicable fund upon warrants properly drawn on those funds."

Section 47. Section 90-6-202, MCA, is amended to read:

"90-6-202. Accounts established. (1) There is within *a state special* revenue fund a local impact and education trust fund account. Moneys are payable into this account under 15-35-108. The state treasurer shall draw warrants from this account upon order of the coal board.

(2) There is within *a state special* revenue fund a coal area highway improvement account."

Section 48. **Code commissioner to make changes.** Whenever a reference to a treasury fund type, fund, or account appears in any new material that is enacted by the 48th legislature and approved by the governor, whether in new sections or amended sections, the code commissioner, in consultation with the department of administration and the legislative fiscal analyst, shall change the reference in that material as necessary to reflect the fund structure provided for in 17-2-102. The code commissioner may make other incidental changes that reflect the intent of this act but do not change the meaning.

Section 49. **Effective date.** This act is effective July 1, 1983.

Approved March 29, 1983.

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CHAPTER NO. 282

AN ACT TO GENERALLY REVISE LANGUAGE IN CODE SECTIONS DEALING WITH THE RETIREMENT SYSTEMS IN ORDER THAT REFERENCES TO THE TREASURY FUND STRUCTURE CONFORM TO CHAPTER 28, LAWS OF 1981, AS REQUIRED BY CHAPTER 28, SECTION 5, LAWS OF 1981; AMENDING SECTIONS 19-1-202, 19-3-104, 19-4-501, 19-5-101, 19-5-202, 19-6-101, 19-6-203, 19-6-401, 19-7-101, 19-7-202, 19-8-101, 19-8-203, 19-8-401, 19-8-405, 19-9-104, 19-9-203, 19-9-501, 19-9-706, 19-12-102, 19-12-407, 19-13-104, 19-13-204, AND 19-13-501, MCA; INSTRUCTING THE CODE COMMISSIONER TO MAKE THE NECESSARY CHANGES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-1-202, MCA, is amended to read:

"19-1-202. Costs of administration. All costs allocable to the administration of this chapter shall be charged to the retirement division *pension trust fund.* So much of the costs as are not defrayed by interest and income earned upon the contribution account, which has been credited to the retirement division *pension trust fund*, as provided in 19-1-602, shall be paid to the state agency for deposit to the retirement division *pension trust fund* by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions."

Section 2. Section 19-3-104, MCA, is amended to read:

"19-3-104. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accumulated contributions" means the sum of all the contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(3) "Actuary" means the actuary retained by the board in accordance with 19-3-305.

(4) "Additional contributions" means contributions by members under the provisions of 19-3-702.

(5) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.

(6) "Beneficiary" means the person so designated pursuant to part 13 of this chapter.

(7) "Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter.

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(8) "Board" means the public employees' retirement board provided for in 2-15-1009.

(9) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year.

(10) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(11) "Creditable service" means the aggregate of membership service and prior service.

(12) "Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(13) "Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402.

(14) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system.

(15) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board.

(16) "Final compensation" means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(17) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

(18) "Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment.

(19) "Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406.

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(20) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection [(9)] of this section.

(21) "Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704.

(22) "Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter.

(23) "Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana.

(24) "Regular interest" means interest at the rate set from time to time by the board.

(25) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(26) "Retirement allowance" means the periodic benefit payable following service, early, or disability retirement.

(27) "Retirement fund" means the public employees' retirement *system pension trust* fund.

(28) "Retirement system" means the public employees' retirement system created by this chapter.

(29) "Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502.

(30) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter.

(31) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 3. Section 19-4-501, MCA, is amended to read:

"19-4-501. Financial administration of moneys. The members of the retirement board are the trustees of all moneys collected for the retirement system, and as such trustees, they shall provide for the financial administration of the moneys in the following manner:

(1) The moneys shall be invested and reinvested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

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(3) The retirement board annually shall divide among the several *reserves* of the retirement system an amount equal to the average balance of the *reserves* during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-4-605(5), the amount to be credited to each *reserve* shall be allocated from the interest and other earnings on the moneys of the retirement system actually realized during the preceding fiscal year, less the amount allocated to the expense *account* under the provisions of 19-4-606.

(4) The state treasurer is the custodian of the collected retirement system moneys and of the securities in which the moneys are invested. All expenditures from the moneys may be made only upon claims signed by two persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as its authority for approving such claims.

(5) All the *reserves* established by part 6 of this chapter shall be accounts in the *pension trust* fund *type* of the treasury fund structure of the state."

Section 4. Section 19-5-101, MCA, is amended to read:

"19-5-101. Definitions. Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(3) "Beneficiary" means the person whom the contributor nominates by written designation, duly acknowledged and filed with the board.

(4) "Board" means the public employees' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the fund standing to his credit.

(6) "Final salary" means the annual current salary for the office retired from.

(7) "Fund" means the Montana judges' retirement system *pension trust fund.*

(8) "Involuntary retirement" means a retirement not for cause and before retirement age.

(9) "Member's annuity" means payments for life derived from contributions made by the contributor.

(10) "Penalty retirement age" means 70 years of age.

(11) "Retired judge" means any judge or justice in receipt of a retirement allowance under this chapter.

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(12) "Retirement allowance" means the state annuity plus the member's annuity.

(13) "State annuity" means payments for life derived from contributions made by the state of Montana."

Section 5. Section 19-5-202, MCA, is amended to read:

"19-5-202. Administrative expenses. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the fund.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system *pension trust* fund."

Section 6. Section 19-6-101, MCA, is amended to read:

"19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana highway patrolmen's retirement *pension trust* fund.

(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the department.

(5) "Board" means the public employees' retirement board provided for in 2-15-1009.

(6) "Compulsory retirement age" means 60 years of age.

(7) "Department" means the public employees' retirement division of the department of administration.

(8) "Final salary" means the average annual compensation received by a member, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Member" means a person who has accumulated deductions in the account standing to his credit.

(10) "Member's annuity" means payments for life derived from contributions made by the member.

(11) "Retired patrolman" means a person in receipt of a retirement allowance under this chapter.

(12) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol or 60 years of age, whichever occurs first.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state of Montana."

Section 7. Section 19-6-203, MCA, is amended to read:

"19-6-203. Administrative expenses. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the *account*.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the *account* to the public employees' retirement system *pension trust* fund."

Section 8. Section 19-6-401, MCA, is amended to read:

"19-6-401. Payments into retirement fund. All appropriations made by the state, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit the payments to the Montana highway patrolmen's retirement *pension trust* fund."

Section 9. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana sheriffs' retirement *pension trust fund* administered by the sheriffs' retirement board.

(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person who is nominated by the member in an acknowledged document which is filed with the board.

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(5) "Board" means the sheriffs' retirement board. The board shall consist of five persons who shall be the same persons that comprise the public employees' retirement board.

(6) "Creditable service" means the aggregate of all of a member's current and prior service.

(7) "Final salary" means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Member" means any person who has accumulated deductions in the account to his credit.

(9) "Member's annuity" means payments for life derived from contributions made by the member while employed.

(10) "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.

(11) "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.

(12) "Retired sheriff" means a person receiving a retirement allowance under this chapter.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "Service" means employment as a sheriff.

(15) "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

(16) "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

(17) "Vested retirement" means a retirement not for cause and before retirement age."

Section 10. Section 19-7-202, MCA, is amended to read:

"19-7-202. Expenses of administration. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the *account*.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that

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amount from the *account* to the public employees' retirement system *pension trust* fund."

Section 11. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana state game wardens' retirement *pension trust* fund.

(2) "Accumulated deductions" or "accumulated contributions" means the sum of all contributions standing to the credit of a member's individual account together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Contributor" means any person who has accumulated deductions in the account standing to his credit.

(7) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(8) "Member's annuity" means payments for life derived from contributions made by the contributor.

(9) "Retired state game warden" means any person in receipt of a retirement allowance under this chapter.

(10) "Retirement allowance" means the state annuity plus the member's annuity.

(11) "State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys.

(12) "State game warden" means all state fish and game wardens hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks moneys."

Section 12. Section 19-8-203, MCA, is amended to read:

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"19-8-203. Expenses of administration. (1) The expense of the administration of this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the *account*.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the *account* to the public employees' retirement system *pension trust* fund.

(3) In addition to the amount provided in subsection (2), the board may assess and the department of administration may collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering this chapter."

Section 13. Section 19-8-401, MCA, is amended to read:

"19-8-401. Creation of state game wardens' retirement fund. There is a state game wardens' retirement *pension trust* fund, and all moneys received under the provisions of this chapter shall be credited to that account."

Section 14. Section 19-8-405, MCA, is amended to read:

"19-8-405. Transfer of dormant accounts. The board may, in its discretion, transfer the accumulated deductions of a member to the employer's account in the Montana state game wardens' retirement *pension trust* fund if the member's account has been dormant for a period of 10 years, provided that no right of the member shall be jeopardized by such transfer. The accumulated deductions shall be transferred to the member's name upon subsequent reentry to membership."

Section 15. Section 19-9-104, MCA, is amended to read:

"19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.

(3) "Board" means the retirement board described in 2-15-1009.

(4) "Credited service" means the aggregate of a member's prior service and membership service.

(5) "Employer" means any city which participated in a prior plan or which elects to join this plan under 19-9-107.

(6) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(7) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(8) "Fund" means the *pension trust fund* in the treasury system designated for the use of the plan.

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(9) "Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65.

(10) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(11) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(12) "Member's annuity" means monthly payments for life derived from member contributions.

(13) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(14) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(15) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(16) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(17) "Plan" means the municipal police officers' retirement system created by this chapter.

(18) "Police officer" means a law enforcement officer employed by an employer.

(19) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 19-9-107 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(20) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(21) "Retirement allowance" means the employer annuity plus the member's annuity.

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(22) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

(23) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer."

Section 16. Section 19-9-203, MCA, is amended to read:

"19-9-203. Administrative expenses. (1) The expense of administration of this chapter, exclusive of amounts required to be paid as benefits to or on behalf of a member, may be paid from the fund.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system *pension trust* fund."

Section 17. Section 19-9-501, MCA, is amended to read:

"19-9-501. Retirement account. On July 1, 1977, there will be *a pension trust* fund to be maintained on behalf of the plan. The state treasurer is the custodian of the *fund* subject to the exclusive administrative control of the board."

Section 18. Section 19-9-706, MCA, is amended to read:

"19-9-706. Contributions based on disability compensation. (1) When an officer receives compensation under 7-32-4132, the member contributions for retirement required under 19-9-601 will be paid on the total compensation received under 7-32-4132 and the employer contribution paid by the municipalities under 19-9-703 and the state contribution under 19-9-702 shall include as part of the salaries paid to police officers all compensation received under 7-32-4132. The service represented by these contributions will be credited in the same manner as provided in 19-9-401.

(2) When an injured officer accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under 19-3-401, all service and contributions previously credited with the municipal police officers' retirement system shall be transferred from the municipal police officers' retirement system *pension trust* fund along with the interest to the public employees' retirement system *pension trust* fund. The employer contributions and interest transferred will be equal to the amount that would have been contributed had the transferred service been normal employment covered under the public employees' retirement system."

Section 19. Section 19-12-102, MCA, is amended to read:

"19-12-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Board" means the public employees' retirement board of the public employees' retirement system.

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(2) "Division" means the division of workers' compensation of the department of labor and industry.

(3) "Fire company" means a fire company organized in an unincorporated area, town, or village under the laws of the state of Montana.

(4) The fiscal year begins on July 1 and ends on June 30 of each year.

(5) "Fund" or "volunteer firefighters' fund" means the volunteer firefighters' *pension trust* fund."

Section 20. Section 19-12-407, MCA, is amended to read:

"19-12-407. Payment of pension benefits. All payments under the volunteer firefighters' pension plan must be approved by the public employees' retirement system and paid by warrants drawn upon the *pension trust* fund, payable to the order of the individual qualified volunteer firefighter or the beneficiary as provided in 19-12-405(1)."

Section 21. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Board" means the retirement board described in 2-15-1009.

(3) "Credited service" means the aggregate of a member's prior service and membership service.

(4) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(5) "Employer" means any city that is of the first or second class or that elects to join this plan under 19-13-108.

(6) "Final average salary" means the monthly compensation of a member hired on or after July 1, 1981, averaged over the last 36 months of his active service or, if he has not been a member that long, over the period of his membership.

(7) "Firefighter" means a person employed as a full- or part-paid firefighter by an employer.

(8) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(9) "Fund" means the *pension trust fund* in the state treasury system designated for the use of the plan.

(10) "Member" means a person who is employed by an employer as a full- or part-paid firefighter or who is entitled to a retirement allowance by virtue of his service to an employer as a firefighter.

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(11) "Member contributions" means the total of the deductions from a member's compensation made during a period of active membership under this chapter or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(12) "Membership service" means a period of employment with an employer occurring after July 1, 1981, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(13) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of credited service.

(14) "Monthly compensation" means:

(a) for a full-paid firefighter, the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for his service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class, 15% of the average regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all newly confirmed, active firefighters employed by cities of the second class on July 1 of each year.

(15) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(16) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for his service as a firefighter.

(17) "Plan" means the municipal firefighters' retirement system created by this chapter.

(18) "Prior plan" means the fire department relief association plan of a city that elects to join the plan under 19-13-108 or the fire department relief association plan of a city of the first or second class.

(19) "Prior service" means a period of employment as a firefighter for which credit was granted to a member under a prior plan and has been transferred to this plan.

(20) "Retirement allowance" means the monthly benefit payable after service or disability retirement.

(21) "Retirement date" means the date on which the first payment of the retirement or disability benefits of a member or a beneficiary is payable.

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(22) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a firefighter."

Section 22. Section 19-13-204, MCA, is amended to read:

"19-13-204. Administrative expenses. (1) The expense of administering this chapter, exclusive of the payment of retirement allowances and other benefits, may be paid from the fund.

(2) Before July 15 of each year, the board may compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the fund to the public employees' retirement system *pension trust* fund."

Section 23. Section 19-13-501, MCA, is amended to read:

"19-13-501. Retirement fund. Beginning July 1, 1981, *a pension trust* fund shall be maintained on behalf of the plan. The state treasurer is the custodian of the *fund* subject to the exclusive administrative control of the board."

Section 24. **Code commissioner to make changes.** Whenever a reference to a treasury fund type, fund, or account appears in any new material enacted by the 48th legislature and approved by the governor, whether in new sections or amended sections, the code commissioner, in consultation with the department of administration and the legislative fiscal analyst, shall change the reference in that material as necessary to reflect the fund structure provided for in 17-2-102. The code commissioner may make other incidental changes to reflect the intent of this act without changing the meaning.

Section 25. **Effective date.** This act is effective July 1, 1983.

Approved March 29, 1983.

CHAPTER NO. 283

AN ACT TO GENERALLY REVISE LANGUAGE IN CODE SECTIONS DEALING WITH THE WORKERS' COMPENSATION DIVISION IN ORDER THAT REFERENCES TO THE TREASURY FUND STRUCTURE CONFORM TO CHAPTER 28, LAWS OF 1981, AS REQUIRED BY CHAPTER 28, SECTION 5, LAWS OF 1981; AMENDING SECTIONS 39-71-206, 39-71-1004, 39-71-2303, 39-71-2304, AND 39-71-2321 THROUGH 39-71-2327, MCA; INSTRUCTING THE CODE COMMISSIONER TO MAKE THE NECESSARY CHANGES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers of division. (1) The attorney general shall be the legal adviser of the division and shall represent it in all proceedings whenever so requested by the division or any member thereof.

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(2) The division may, in the investigation and defense of cases under plan No. 3 of the Workers' Compensation Act, employ such other attorney or legal adviser as it deems necessary and pay for the same out of the industrial insurance account in the *expendable trust* fund."

Section 2. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 shall be made from the industrial accident rehabilitation account in *a state special revenue* fund. Payments to the account shall be made on or before July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the division, an amount to be determined by the division, not exceeding 1% of the compensation paid to injured employees in Montana from the industrial insurance *expendable trust* fund and the occupational disease *expendable trust* fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the *state special revenue* fund shall be kept for each of the plans. If in any fiscal year the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.

(3) The payments herein provided for shall be made to the division, which shall credit the sums paid to the industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the account shall be made after approval by the department of social and rehabilitation services and upon audit and approval by the department of administration.

(4) No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the division or department of social and rehabilitation services."

Section 3. Section 39-71-2303, MCA, is amended to read:

"39-71-2303. Manner of electing — contract or policy of insurance — payment of premium. The division shall prescribe the procedure by which employers may elect to be bound by compensation plan No. 3, the effective time of such election, and the manner in which such election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 shall receive from the division a contract or policy of insurance in a form approved by the division. The premium thereon shall be paid by the

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employer to the division at such times as the division shall prescribe and shall be paid over by the division to the state treasurer to the credit of the industrial insurance *expendable trust* fund."

Section 4. Section 39-71-2304, MCA, is amended to read:

"39-71-2304. Determination of rates and classifications by division. (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience and as a member of a rating organization as is otherwise provided for in this chapter may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the division, as a member of a rating organization, into classes, whose rates may be readjusted at such times as the division as a member of such rating organization may actuarially determine. Separate accounts shall be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance *expendable trust fund* shall be one and indivisible.

(3) The division as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it as a member of such rating organization.

(4) In addition, compensation plan No. 3 shall use an experience rating system for employers enrolled under it. This system shall reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance *expendable trust fund* allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division as a member of such rating organization. The amounts of such reserves and surplus shall be as determined from time to time by the division to be adequate but not excessive for the purposes intended."

Section 5. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in industrial insurance expendable trust fund. All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities

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acquired by or through use of money shall be deposited in the industrial insurance *expendable trust* fund."

Section 6. Section 39-71-2322, MCA, is amended to read:

"39-71-2322. Money in industrial insurance fund held in trust — disposition of funds upon repeal of chapter. The moneys coming into the industrial insurance *expendable trust* fund shall be held in trust for the purpose for which such moneys were collected, and if this chapter shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this chapter. In default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing."

Section 7. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in industrial insurance expendable trust fund — payment of dividends. If at the end of any fiscal year there exists in the industrial insurance *expendable trust* fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the division may declare a dividend in such manner as the rules of the division may prescribe to those employers who have paid premiums into the industrial insurance *expendable trust* fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the division shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 8. Section 39-71-2324, MCA, is amended to read:

"39-71-2324. Investment of reserve — payment of installments. The division shall turn over the reserve to the board of investments to be invested, and the same shall be invested by the board of investments as part of the long-term investment fund and out of the same and its earnings shall be paid the monthly installments and any lump sum then or thereafter arranged for. However, when there is sufficient money in the industrial insurance *expendable trust* fund to meet such compensation payments, any surplus remaining may be invested as specified in this section."

Section 9. Section 39-71-2325, MCA, is amended to read:

"39-71-2325. Division to keep accounts of segregations. The division shall keep an accurate account of all such segregations of the industrial insurance *expendable trust* fund and shall divert from the *fund* any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Section 10. Section 39-71-2326, MCA, is amended to read:

"39-71-2326. Disbursements out of industrial insurance expendable trust fund — employer to pay warrant if funds insufficient. Disbursements out of the industrial insurance *expendable*

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trust fund shall be made by the division. If at any time there is not sufficient money in the *fund* with which to pay any warrants drawn thereon, the employer on account of whose workers the warrant was drawn shall pay the same, and upon his next contribution to the *fund*, he shall be credited with the amount so paid, with interest thereon at the rate of 6% per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such *fund* for the excess; and if the warrant is not paid for want of funds, it shall be credited to the employer and be applied upon succeeding assessments."

Section 11. Section 39-71-2327, MCA, is amended to read:

"39-71-2327. Earnings of industrial insurance expendable trust fund to be credited to fund — improper use a felony. All earnings made by the industrial insurance *expendable trust* fund by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of the *fund*, and the making of profit, either directly or indirectly, by any person out of the use of the *fund* shall constitute a felony and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding 2 years or a fine not exceeding $5,000 or both such fine and imprisonment."

Section 12. **Code commissioner to make changes.** Whenever a reference to a treasury fund type, fund, or account appears in any new material enacted by the 48th legislature and approved by the governor, whether in new sections or amended sections, the code commissioner, in consultation with the department of administration and the legislative fiscal analyst, shall change the reference in that material as necessary to reflect the fund structure provided for in 17-2-102. The code commissioner may make other incidental changes to reflect the intent of this section and 17-2-102 without changing the meaning.

Section 13. **Effective date.** This act is effective July 1, 1983.

Approved March 29, 1983.

CHAPTER NO. 284

AN ACT PROVIDING THAT THE REGISTRATION OF AN ELECTOR IS COMPLETE UPON RECEIPT BY THE ELECTION ADMINISTRATOR OF A PROPERLY COMPLETED REGISTRATION CARD; AMENDING SECTION 13-2-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-114, MCA, is amended to read:

"13-2-114. Registration numbers to be assigned. (1) The registration form for each elector shall be assigned a number by the election administrator, using a system of numbering that best accommodates the

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filing system and list preparation method used. The election administrator may adopt the use of the elector's social security number as the registration number. If social security numbers are used, they may not be printed on lists of registered voters or released as public information.

(2) If social security numbers are used as the registration number, the election administrator may assign an alternative number for any elector who does not have a social security number or who declines to provide the number. A system of assigning alternative numbers shall be developed in consultation with the secretary of state.

(3) Upon receipt by the election administrator of a properly completed registration card, the registration of the elector is complete, and the election administrator shall assign a registration number."

Approved March 29, 1983.

CHAPTER NO. 285

AN ACT TO TRANSFER FUNCTIONS REGARDING MATERNITY LEAVE FROM THE COMMISSIONER OF LABOR AND INDUSTRY TO THE COMMISSION FOR HUMAN RIGHTS; AMENDING SECTION 39-7-203, MCA; REPEALING SECTIONS 39-7-201, 39-7-202, AND 39-7-205 THROUGH 39-7-209, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-7-203, MCA, is amended to read:

"**39-7-203. Maternity leave — unlawful acts of employers.** It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time."

Section 2. **Functions transferred — sections renumbered.** The functions of the commissioner of labor and industry regarding maternity leave provided in Title 39, chapter 7, part 2, are transferred to the commission for human rights. Sections 39-7-203 and 39-7-204, MCA, are intended to be renumbered and recodified as an integral part of Title 49,

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chapter 2, part 3, and the provisions of Title 49, chapter 2, apply to sections 39-7-203 and 39-7-204.

Section 3. **Repealer.** Sections 39-7-201, 39-7-202, and 39-7-205 through 39-7-209, MCA, are repealed.

Section 4. **Saving clause.** This act does not affect any complaints filed with the commissioner of labor and industry under Title 39, chapter 7, part 2, prior to July 1, 1983.

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved March 29, 1983.

CHAPTER NO. 286

AN ACT REVISING THE EXCESS UNFUNDED LIABILITY PROVISIONS OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT ACT AND THE FIREFIGHTERS' UNIFIED RETIREMENT ACT; AMENDING SECTIONS 19-9-107, 19-9-503, AND 19-13-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-107, MCA, is amended to read:

"19-9-107. Election to join plan — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the plan by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this chapter. Upon the enactment of such an ordinance, the provisions of this chapter become applicable to the city. Any city enacting such an ordinance shall send a certified copy thereof to the board and shall, as soon as possible thereafter, deposit with the board all cash and securities held by it in its local police reserve or retirement fund. The value of the securities shall be determined by the board.

(2) The trustees or other administrative head of the local system as of the effective date of the election shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of the members in the plan and administered as if the contributions had been made during membership in the plan. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions *for a period determined by the administrator.* Any excess of employer charges over credits under this section are payable by the employer, with interest, *for a period of 10 years or less as* determined by the *administrator.*"

Section 2. Section 19-9-503, MCA, is amended to read:

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"19-9-503. Unfunded liabilities. (1) It is found and declared by the legislature that many cities operating under prior plans have excess and unfunded liabilities under such prior plans, which liabilities cannot be amortized by the percentage contributions set forth in 19-9-702 and 19-9-703.

(2) The administrator shall, on or before October 1, 1977, determine the excess and unfunded liability of each city which participates in the plan created by this chapter. The determination of the administrator, in the absence of fraud, abuse of discretion, or arithmetic error, is final and binding on each city. Each city found by the administrator to have an excess and unfunded liability under a prior plan which as of July 1, 1977, is not funded by sums on deposit or funds available for deposit with the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by the administrator. If any city and the administrator are unable by January 1, 1978, to negotiate and reduce to writing the terms of an agreement satisfactory to both of them for the city to amortize its excess liability, the administrator shall require such city to pay an additional sum to amortize its excess liability on July 1, 1977, over a period of not more than 40 years.

(3) Each city found by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for any such excess payments.

(4) The excess unfunded liability for each city shall be revaluated by the administrator on July 1, 1980, as part of the normal actuarial valuations required in 19-9-504 reflecting the change in the contribution rates made in 19-9-601, 19-9-702, and 19-9-703, as amended by Chapter 375, Laws of 1979, and each city's funding position will be changed using the procedures of 19-9-107. The resulting report will be made available to the cities no later than October 1, 1980.

(5) If a majority of the cities participating in the municipal police officers' retirement system do not agree with the results of the revaluation outlined in subsection (4), they may, by mutual agreement of the cities, select a qualified actuary, as defined in 19-9-504, to perform a second actuarial valuation as of July 1, 1980, with the conclusions of the second actuarial valuation to replace the actuarial valuation discussed in subsection (4). The cost of the second actuarial valuation shall be paid by all cities participating in the system in proportion to their active membership in the system as of July 1, 1980.

(6) *(a) On April 1, 1983, the administrator shall revaluate the excess unfunded liability for each city based on the actuarial valuation required in 19-9-504 for the period ended June 30, 1982. Each city with an excess unfunded liability as of June 30, 1982, shall pay 25% of this excess unfunded liability, with interest, in 10 annual installments, the first payment due May 1, 1983, and subsequent payments due May 1 of each year thereafter, with the final payment due May 1, 1992.*

(b) Credits received by a city following the revaluation required in subsection (6)(a) must be reduced proportionately over a 10-year period beginning July 1, 1983.

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(c) On July 1, 1993, each city shall pay the employer contribution rate specified in 19-9-703 without credit reduction, except for a city joining the plan after June 30, 1982. A city joining the plan after June 30, 1982, is subject to the provisions of 19-9-107.

(7) Subject to judicial review, the board is the determining body as to the interpretation and application of this section."

Section 3. Section 19-13-503, MCA, is amended to read:

"**19-13-503. Unfunded liabilities.** (1) The legislature finds and declares that many cities operating under prior plans have excess and unfunded liabilities, and the liabilities cannot be amortized by the percentage contributions set forth in this chapter.

(2) The administrator shall, on or before October 1, *1986*, determine the excess and unfunded liability of each city participating in the plan created by this chapter. The determination must be negotiated between each city and the administrator. Each city determined by the administrator to have an excess and unfunded liability under a prior plan that, as of July 1, *1986*, is not funded by sums on deposit or funds available for deposit with the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by agreement between the city and the administrator.

(3) Each city determined by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for the excess payments.

(4) For each city with an unfunded liability, any portion of the member, employer, and state contributions that exceeds the amount necessary to maintain the current level of unfunded liability must be applied to the reduction of the unfunded liability."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

CHAPTER NO. 287

AN ACT TO TRANSFER FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF COMMERCE THE FUNCTIONS OF GENERALLY ASSISTING POLITICAL SUBDIVISIONS, EXERCISING OVERSIGHT OF FINANCIAL AND REPORTING SYSTEMS, SUPERVISING RECORDS RETENTION, AND PERFORMING AUDITS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Functions transferred.** (1) The functions of the department of administration of generally assisting political subdivisions, exercising oversight of financial and reporting systems, supervising records

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retention, and performing audits in Title 2, chapter 7, part 5; 2-9-702; 2-9-802; 7-1-4130; 7-1-4145; 7-1-4147; 7-1-4148; Title 7, chapter 2, part 49; 7-3-146; 7-3-153; 7-4-2634; 7-5-2132; 7-5-4124; 7-6-207; 7-6-209; 7-6-210; 7-6-2114; 7-6-2203; 7-6-2212; 7-6-2302; 7-6-2311; 7-6-2314; 7-6-2315; 7-6-2322; 7-6-2352; 7-6-4111; 7-6-4113; 7-6-4205; 7-6-4221; 7-6-4225; 7-6-4233; 7-7-123; 17-6-103; 19-11-206; 19-11-403; 20-1-212; 20-9-203; 20-9-344; 20-9-504; 61-2-208; 85-7-1616; 85-7-1913; 85-7-2027; and 85-9-611 are transferred to the department of commerce.

(2) Any reference in the MCA to "department of administration" in the sections and parts listed in subsection (1) or related references to "department" or "director" (of the department of administration) are changed to "department" (of commerce) or "director" (of commerce).

Section 2. **Acts passed and approved by 48th legislature — executive transfer.** The governor may by executive order assign to the department of commerce in a manner consistent with this act functions allocated to the department of administration by the 48th legislature relating to local governments or political subdivisions.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved March 29, 1983.

CHAPTER NO. 288

AN ACT TO EXCLUDE LINE TRUCKS AND BUCKET TRUCKS FROM THE LAWS REGULATING HOISTING ENGINES; AMENDING SECTION 50-76-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-76-101, MCA, is amended to read:

"50-76-101. Where chapter not to apply. (1) This chapter shall not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

(2) The provisions of this chapter shall not apply to forklifts and front-end and rear-end loaders *or line trucks and bucket trucks. For the purposes of this section, "line trucks" are hoisting and digging devices mounted on a standard manufacturer's truck chassis with an all-weather cab capable of transporting a driver and two or more crewmen. "Line trucks" are equipped with a hydraulically operated, telescoping boom which uses a nonmetallic cable for hoisting. The telescoping boom does not extend more than 36 feet in length when fully extended as measured from pivot pin to the center of the furthest pulley or sheave. "Line trucks" may be equipped with a rotary digging device and are capable of attaining maximum allowable highway speeds. "Bucket trucks" are personnel-lifting devices designed to lift personnel to work stations above*

ground. "Bucket trucks" are not designed for the purposes intended for a "line truck"."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

CHAPTER NO. 289

AN ACT REQUIRING THAT WORKERS' COMPENSATION BENEFITS RECEIVED BY A MEMBER OF THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM BE INCLUDED AS PART OF THE MEMBER'S MONTHLY COMPENSATION RECEIVED DURING A DISABILITY PERIOD FOR THE PURPOSES OF DETERMINING CONTRIBUTIONS AND SERVICE CREDITS UNDER THE RETIREMENT SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Contributions on workers' compensation benefits.** If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under 19-13-601, 19-13-604, and 19-13-605 must be based on the total compensation received by the member from his employer and from the workers' compensation division during the period of disability.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 13, part 6, and the provisions of Title 19, chapter 13, apply to section 1.

Section 3. **Applicability.** Section 1 applies to a member retiring on or after July 1, 1981.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 29, 1983.

CHAPTER NO. 290

AN ACT ESTABLISHING PROCEDURES FOR TRANSFERRING SERVICE CREDITS BETWEEN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTION 19-3-509, MCA; REPEALING SECTION 19-3-507, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transfer of service credits from teachers' retirement system.** (1) For the purpose of this section, "assumed salary" means the sum of the following:

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(a) earned compensation for all full-time service and part-time service as defined in 19-4-101; and

(b) the amount of the first full year's teaching salary earned in Montana after any period of creditable service not included in subsection (1)(a) multiplied by the number of years or partial years granted by the teachers' retirement system.

(2) A member may at any time before his retirement make a written election with the board to qualify in the public employees' retirement system all of his creditable service in the teachers' retirement system.

(3) The amount that must be paid to the retirement system to qualify this service under subsection (2) is the sum of the following:

(a) from the teachers' retirement system, an amount equal to the combined employer and employee contributions as defined in 19-3-701 and 19-3-801, based on the assumed salary, less the amount paid by the employee in subsection (3)(b); and

(b) from the employee, the amount of his accumulated contributions at the time he terminated active membership, as defined in 19-4-302, plus accrued interest from the date of termination until payment is received by the retirement system based on the interest tables in use by the retirement system.

(4) The amount of creditable service granted in subsection (2) must be on a month-by-month basis. Military service credit transferred from the teachers' retirement system must be included in the 5-year maximum military service credit provided for in 19-3-503.

(5) Subject to the provisions of 19-3-304, the board is the sole authority in determining the amount of creditable service qualified under subsections (2) and (4) and the amount paid to the retirement system under subsection (3).

(6) If a member who has creditable service in the teachers' retirement system dies before he qualifies this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle his beneficiary to a death benefit, the payment of the death benefit is the liability of the public employees' retirement system. Before payment of the death benefit, the teachers' retirement board must transfer to the public employees' retirement system the employee and employer contributions necessary to qualify this service in the public employees' retirement system as provided in subsection (3)(a).

Section 2. **Transfer of service credits from public employees' retirement system.** (1) For the purpose of this section, "assumed salary" means the sum of the following:

(a) compensation for all membership service as defined in 19-3-104; and

(b) the salary base used by the public employees' retirement system when granting military service under 19-3-502 and 19-3-503 and service

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credits for time when a member is absent from service because of injury or illness under 19-3-504.

(2) A member may at any time before his retirement make a written election with the retirement board to qualify in the teachers' retirement system all of his creditable service in the public employees' retirement system.

(3) The amount that must be paid to the retirement system to qualify this service under subsection (2) is the sum of the following:

(a) from the public employees' retirement system, an amount equal to the combined employer and employee contributions as defined in 19-4-602 and 19-4-605, based on the assumed salary less the amount paid by the employee in subsection (3)(b); and

(b) from the employee, the amount of his accumulated contributions at the time he terminated active membership under 19-3-406 plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.

(4) A member who qualifies service from the public employees' retirement system in the teachers' retirement system must complete 5 years of membership service in the teachers' retirement system to qualify or purchase military service, out-of-state teaching service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If a member who has creditable service in the public employees' retirement system dies before he qualifies this service in the teachers' retirement system and if his service credits from both systems, when combined, entitle his beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the employee and employer contributions necessary to qualify this service in the teachers' retirement system as provided in subsection (3)(a).

(7) If the retirement board determines that an individual's membership was erroneously classified, the member's accumulated contributions and service must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in subsection (3)(a) are the liability of the employing entity where the error occurred.

Section 3. Section 19-3-509, MCA, is amended to read:

"19-3-509. Qualification of service from other Montana public retirement systems. (1) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the highway patrolmen's, sheriffs', game wardens', or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting

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the service in the public employees' retirement system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (2). This service may not be credited in more than one retirement system under Title 19.

(2) Upon receiving the member's payment under subsection (1), the administrator shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system."

Section 4. **Repealer.** Section 19-3-507, MCA, is repealed.

Section 5. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 19, chapter 3, part 5, and the provisions of Title 19, chapter 3, apply to section 1.

(2) Section 2 is intended to be codified as an integral part of Title 19, chapter 4, part 4, and the provisions of Title 19, chapter 4, apply to section 2.

Section 6. **Effective date.** This act is effective July 1, 1983.

Approved March 29, 1983.

CHAPTER NO. 291

AN ACT TO PROVIDE THAT THE TRAINING SERVICES OF THE COUNTY ATTORNEY TRAINING COORDINATOR MAY BE MADE AVAILABLE TO CITY ATTORNEYS AND THAT THE TRAINING COORDINATOR MAY CHARGE A FEE FOR THE TRAINING; AMENDING SECTION 44-4-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-4-103, MCA, is amended to read:

"44-4-103. Functions. The training coordinator shall perform the functions assigned by the attorney general. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys, *city attorneys,* and other law enforcement personnel. *The training coordinator may require payment by city attorneys of a fee commensurate with the cost of the training.*

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function."

Approved March 29, 1983.

CHAPTER NO. 292

AN ACT PERMITTING A DEFENDANT SENTENCED TO DEATH TO BE CONFINED AT THE STATE PRISON AT STATE EXPENSE PENDING EXECUTION; AMENDING SECTION 46-19-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-19-103, MCA, is amended to read:

"**46-19-103. Execution of death.** (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to the state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

(4) A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place.

(5) The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives, or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than those mentioned in this subsection can be present at the execution, nor can any person under age be allowed to witness the same.

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(6) After the execution, the sheriff must make a return upon the death warrant showing time, mode, and manner in which it was executed."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 30, 1983.

CHAPTER NO. 293

AN ACT TO ALTER CERTAIN JUDICIAL DISTRICT BOUNDARIES AND TO CHANGE THE NUMBER OF JUDGES IN CERTAIN JUDICIAL DISTRICTS; PROVIDING FOR THE ELECTION OF NEW JUDGES; AMENDING SECTIONS 3-5-101 AND 3-5-102, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-101, MCA, is amended to read:

"**3-5-101. Judicial districts defined.** In this state there are *20* judicial districts, distributed as follows:

(1) 1st district: Lewis and Clark and Broadwater Counties;

(2) 2nd district: Silver Bow County;

(3) 3rd district: Deer Lodge, Granite, and Powell Counties;

(4) 4th district: Missoula, Mineral, *and* Ravalli Counties;

(5) 5th district: Beaverhead, Jefferson, and Madison Counties;

(6) 6th district: Park and Sweet Grass Counties;

(7) 7th district: Dawson, McCone, Richland, *Prairie,* and Wibaux Counties;

(8) 8th district: Cascade *County*;

(9) 9th district: Teton, Pondera, Toole, and Glacier Counties;

(10) 10th district: Fergus, Judith Basin, and Petroleum Counties;

(11) 11th district: Flathead County;

(12) 12th district: Liberty, Hill, and *Chouteau* Counties;

(13) 13th district: Yellowstone, Stillwater, Carbon, *and* Big Horn Counties;

(14) 14th district: Meagher, Wheatland, Golden Valley, and Musselshell Counties;

(15) 15th district: Roosevelt, Daniels, and Sheridan Counties;

(16) 16th district: Custer, Carter, Fallon, Powder River, Garfield, *Treasure*, and Rosebud Counties;

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(17) 17th district: Phillips, *Blaine*, and Valley Counties;

(18) 18th district: Gallatin County;

(19) 19th district: Lincoln County;

(20) 20th district: Lake and Sanders Counties."

Section 2. Section 3-5-102, MCA, is amended to read:

"**3-5-102. Number of judges.** In each judicial district there must be the following number of judges of the district court:

(1) in the 2nd, *7th*, 11th, 16th, and 18th districts, two judges each;

(2) in the *1st and* 8th *districts*, three judges *each*;

(3) in the 4th *district*, four judges;

(4) in the 13th district, five judges;

(5) in all other districts, one judge each."

Section 3. **Selection of new judges.** (1) Except as provided in subsection (2), the judgeships created by this act shall be initially filled at the 1984 general election, and the individuals elected shall take office on the first Monday of January, 1985.

(2) A judgeship created by this act may be initially filled at the 1983 general election if a majority of the county commissioners in each county within the judicial district where the judge will be elected agree to conduct the election. The individual elected shall take office on the first Monday of January, 1984.

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Effective dates.** (1) Except as provided in subsection (2), sections 1 and 2 are effective January 7, 1985.

(2) Sections 1 and 2 or portions thereof are effective January 2, 1984, as necessary to accommodate early elections provided in section 3(2).

(3) Sections 3 and 4 are effective October 1, 1983.

Approved March 30, 1983.

CHAPTER NO. 294

AN ACT TO RAISE THE MAXIMUM PERMISSIVE MILL LEVY FOR COUNTY MUSEUMS; AMENDING SECTION 7-16-2205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2205, MCA, is amended to read:

"**7-16-2205. Authorization for mill levy for support of museums.** (1) The board of county commissioners of any county owning or acquiring any such museum or collection of exhibits:

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(a) may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support thereof; and

(b) to meet and take care of such appropriation, may annually levy a tax not to exceed 2 *mills* on each dollar of the taxable valuation of the property subject to taxation in the county.

(2) The levy shall be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of such levy shall be kept in a special fund by the county treasurer and used solely for the purpose for which such levy was made."

Approved March 30, 1983.

CHAPTER NO. 295

AN ACT TO INCLUDE FUNDS INVESTED IN CERTIFICATES OF DEPOSIT IN MONTANA FINANCIAL INSTITUTIONS IN THE DEFINITION OF "MONTANA SECURITIES" FOR PURPOSES OF COMPUTING THE PREMIUM TAX ON INSURERS; AMENDING SECTION 33-2-705, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report (except as to wet marine and transportation insurance taxed under subsection (4) below) in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes the total

charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums. This tax may be computed in either of the following ways:

(a) (i) A domestic insurer may choose to compute its tax based on the percentage of its admitted assets invested in Montana securities according to the following schedule:

(A) 2 ¾ % of net premiums if the insurer has 0% of its admitted assets invested in Montana securities;

(B) 2 ¼ % of net premiums if the insurer has at least 25% of its admitted assets invested in Montana securities;

(C) 1 ¾ % of net premiums if the insurer has at least 50% of its admitted assets invested in Montana securities;

(D) 1 ¼ % of net premiums if the insurer has at least 75% of its admitted assets invested in Montana securities; and

(E) ¾ % of net premiums if the insurer has 100% of its admitted assets invested in Montana securities.

(ii) "Admitted assets" are those assets allowed in 33-2-501.

(iii) An insurer choosing this method of computation must itemize its Montana securities on a detailed schedule attached to its annual tax report.

(b) (i) If the method provided for in subsection (a) is not used, the insurer shall compute its tax at the rate of 2 ¾ % of the net premiums.

(ii) An insurer choosing this method and having not less than 50% of its paid-in capital stock invested in Montana securities is allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section.

(3) For the purpose of subsection (2):

(a) "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to 10% of the insurer's assets; and

(b) "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, *funds invested in certificates of deposit in a bank or building and loan association located in Montana and whose deposits are insured by an agency of the United States or an insurer approved by the department of commerce,* and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

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(4) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine, inland marine, and transportation insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229, written in this state during the calendar year next preceding and shall at the same time pay to the commissioner a tax of ¾ of 1% of such gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (4) the amounts refunded, credited, or paid as participation dividends or savings by such insurers to the holders of such contracts.

(5) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(6) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(7) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section."

Approved March 30, 1983.

CHAPTER NO. 296

AN ACT VALIDATING UNACKNOWLEDGED DEEDS EXECUTED PRIOR TO JANUARY 1, 1983; VALIDATING, AND MAKING SUFFICIENT AS LEGAL NOTICE OF THE INTEREST CONTAINED THEREIN, ALL INSTRUMENTS AFFECTING REAL PROPERTY RECORDED PRIOR TO JANUARY 1, 1983, REGARDLESS OF TECHNICAL DEFECTS; AMENDING SECTIONS 70-20-315 AND 70-21-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-20-315, MCA, is amended to read:

"70-20-315. Validation of unacknowledged deeds. All deeds to real property executed prior to January 1, *1983,* in this state or any state

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or territory of the United States, provided no action is pending on *October 1, 1983*, to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state and be conclusive evidence of the title to the lands therein described against the grantors, their heirs, and assigns."

Section 2. Section 70-21-309, MCA, is amended to read:

"70-21-309. Validation of conveyances recorded after defective execution — notice imparted. (1) Any instrument affecting real property, provided no action is pending as of October 1, *1983*, to set such instrument aside, which was, previous to January 1, *1983*, recorded in the office of the county clerk and recorder shall be deemed to impart after that date notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any technical defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to January 1, *1983*.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded."

Approved March 30, 1983.

CHAPTER NO. 297

AN ACT TO AUTHORIZE THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE PERMITS FOR THE TAKING AND HOLDING OF RAPTORS FOR CAPTIVE BREEDING PROJECTS; AMENDING SECTIONS 87-5-204 AND 87-5-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-204, MCA, is amended to read:

"87-5-204. License and rules for falconry. (1) The department may adopt specific rules for the keeping of records and for the trapping, taking, possession, or training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry. *Except as provided in [section 3], it* is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.

(2) The fee for a falconry license is $3 a year or any part of a year. A license expires April 30 each year.

(3) A license may not be issued to a person under the age of 12 years.

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(4) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds shall have in possession a valid resident or nonresident game bird license.

(5) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department."

Section 2. Section 87-5-206, MCA, is amended to read:

"87-5-206. Restrictions on taking, possessing, and selling raptors. (1) A licensee may not at any time possess more than three raptors, including those that have been imported, *except as permitted by the department under [section 3].*

(2) Licensees may take raptors as young or fledglings from nests (unless specifically prohibited by department rules) or by traps or nets which are humane in their operation and use. Not more than one young may be taken from one nest by a permittee or permittees, and at least one young must be left in the nest. The department may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This subsection does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit that activity. Trapping raptors is permitted only between September 1 and February 1.

(3) A licensee may not transfer ownership or possession of a raptor taken or possessed under the provisions of this part without notifying the department within 10 days after the date of transfer.

(4) A person may not sell or offer for sale Montana raptors in this state. A person may not transport raptors out of the state except by permit issued by the department."

Section 3. **Permit for captive breeding of raptors.** The department may grant permits to a person, whether or not licensed under this part, for the taking and holding of raptors for captive breeding purposes under such conditions, consistent with this part, as the department may specify in the permit.

Section 4. **Rules.** The department may adopt rules for the keeping of records and for the trapping, taking, possession, propagation, and release of raptors taken and held for captive breeding projects.

Section 5. **Permit fee — transfer.** (1) The fee for a captive breeding permit is $20 a year.

(2) Captive breeding permits are not transferable and may be revoked at any time by the department for violation of any conditions of the permit or regulations of the department.

Approved March 30, 1983.

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CHAPTER NO. 298

AN ACT TO GENERALLY REVISE LANGUAGE IN CODE SECTIONS DEALING WITH THE ISSUANCE OF BONDS IN ORDER THAT REFERENCES TO THE TREASURY FUND STRUCTURE CONFORM TO CHAPTER 28, LAWS OF 1981, AS REQUIRED BY CHAPTER 28, SECTION 5, LAWS OF 1981; AMENDING SECTIONS 17-5-401, 17-5-403 THROUGH 17-5-408, 17-5-411, 17-5-412, 17-5-421, 17-5-422, 17-5-503, 17-5-506, 17-5-507, 17-5-608, 17-5-618, 17-5-702 THROUGH 17-5-705, 17-5-708 THROUGH 17-5-710, 20-25-433, 20-25-434, 60-3-201, 60-11-1107, 76-15-507, 85-1-102, 85-1-304, 85-1-307, 85-1-321 THROUGH 85-1-323, 85-1-603 THROUGH 85-1-606, 85-1-613 THROUGH 85-1-615, 85-1-617, 85-1-619, 85-1-620, 85-1-623, 90-2-102, 90-2-112, AND 90-2-121 THROUGH 90-2-127, MCA; INSTRUCTING THE CODE COMMISSIONER TO MAKE NECESSARY CHANGES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-401, MCA, is amended to read:

"17-5-401. Definitions. (1) "Board", "department", and "treasurer" mean the board of examiners, department of administration, and state treasurer, respectively.

(2) *"Capital projects fund"* means a separate long-range building program *fund* which is created within the *capital projects* fund *type* established in 17-2-102.

(3) "Long-range building program" means and includes all buildings, structures, and facilities to be constructed, repaired, used, equipped, or furnished and land to be acquired therefor with the consent of the legislature in accordance with 17-7-202 and 18-2-101 through 18-2-105.

(4) "Long-range building program bonds" means and includes all series of bonds issued to finance any portion of the long-range building program or to refund outstanding bonds, as authorized in this part.

(5) *"Debt service* account" means a separate long-range building program *fund* which is created within the *debt service* fund *type* established in 17-2-102."

Section 2. Section 17-5-403, MCA, is amended to read:

"17-5-403. Form, principal and interest, fiscal agent, and deposit of proceeds. (1) Each series of such bonds shall be issued by the board upon request of the department, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at such rate or rates, maturing at such times not exceeding 30 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office

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of such fiscal agency of the state as the board shall determine subject to the limitations contained in this section and 17-5-402.

(2) In the issuance of each series of such bonds, the amount, maturities, and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on all such bonds then outstanding and on the series so to be issued will not exceed 50% of the average annual amount collected during the 3 then next preceding fiscal years from the special taxes pledged by law to the *debt service* account at the time of such issuance, except that this provision shall not constitute a covenant of the state for the security of the bonds issued pursuant to this part after January 1, 1973, and the state reserves the right to amend this subsection in any manner after all bonds issued prior to that date and the interest thereon have been fully paid or the state's liability thereon has been otherwise fully discharged.

(3) In all other respects the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board is hereby authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

(5) All proceeds of bonds issued hereunder shall be deposited in the *capital projects fund*, except that any premiums and accrued interest received shall be deposited in the *debt service* account."

Section 3. Section 17-5-404, MCA, is amended to read:

"17-5-404. Use of capital projects fund. The *capital projects fund* shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program, upon order of the department acting within the limits of the authority conferred upon it by the legislature."

Section 4. Section 17-5-405, MCA, is amended to read:

"17-5-405. Debt service account. (1) From and after the pledge and appropriation of any special tax to the *debt service* account, as provided and contemplated in this section, 17-5-407, and 17-5-408, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the *debt service* account.

(2) No special taxes pledged to the *debt service* account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this part prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to the extent, if any, that the right so to do has been reserved in the resolutions authorizing the issuance of such bonds.

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(3) Subject to the provisions of subsections (1) and (2), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the *debt service* account.

(4) Money in the *debt service* account shall be used: first, to pay interest and principal when due on long-range building program bonds; second, to accumulate a reserve in the amount required below, for the further security of such payments; and third, to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(5) Money at any time received in the *debt service* account in excess of the principal, interest, and reserve requirements stated in subsection (4) shall be transferred by the treasurer to the general fund. If the balance at any time on hand in the *debt service* account is not sufficient for compliance with subsection (4), the treasurer shall credit to said account an amount sufficient to restore said balance from the next collections of the special taxes appropriated to said account and from any other collections of taxes appropriated to the general fund, not exceeding the aggregate amount theretofore transferred from the *debt service* account to the general fund."

Section 5. Section 17-5-406, MCA, is amended to read:

"17-5-406. Use of debt service account. The *debt service* account shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay long-range building program bonds and interest thereon when due so long as any such bonds or interest remain unpaid."

Section 6. Section 17-5-407, MCA, is amended to read:

"17-5-407. Reservation of power to pledge taxes — redemption — refunding bonds. (1) The state reserves the power, by enactment of the legislature or the people, to levy, impose, and assess and to pledge and appropriate to the *debt service* account any tax specially designated therein or any specified amount or percentage of the collections of such special tax. The state also reserves the power to appropriate any funds designated by enactment of the legislature or the people for the redemption and prepayment of any long-range building program bonds or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstanding bonds.

(2) Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in 17-5-403(2), substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded.

(3) Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the *debt service* account, to provide funds for payment of principal or interest due on long-range building program

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bonds when and if and to the extent that the *debt service* account is insufficient for this purpose."

Section 7. Section 17-5-408, MCA, is amended to read:

"17-5-408. Percentage of income, corporation license, and cigarette tax pledged. (1) The state pledges and appropriates and directs to be credited as received to the *debt service* account 11% of all money, except as provided in 15-31-702, received from the collection of the income tax and the corporation license tax referred to in 15-1-501 and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4), provided that no more than 11% of such tax collections shall be deemed to be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the *debt service* account 73% of all money received from the collection of the 12-cent excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the *debt service* account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 8. Section 17-5-411, MCA, is amended to read:

"17-5-411. Agreement with division of workers' compensation. If the proceeds of any bonds issued pursuant to 17-5-410 are appropriated for the purpose of constructing a workers' compensation building in Helena, the board of examiners and division of workers' compensation shall enter into an agreement pursuant to which the division shall agree to pay the state treasurer for deposit in the *debt service* account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on those bonds from which the appropriation was made and to accumulate and maintain the required reserve attributable to those bonds. The agreement shall provide that, to the extent not required for costs of completing the building, the income from investment of the bond proceeds prior to expenditure and from investment of the reserve shall be credited against the division's payment obligation. The agreement shall allow for accumulation of the reserve during the first year the bonds are outstanding. The payments under the agreement shall be made from revenues and moneys of the division available therefor."

Section 9. Section 17-5-412, MCA, is amended to read:

"17-5-412. Agreement with employment security division. If the proceeds of any bonds issued pursuant to 17-5-410 are appropriated

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for the purpose of constructing employment service buildings, the board of examiners and employment security division shall enter into an agreement pursuant to which the division shall agree to pay the state treasurer for deposit in the *debt service* account established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on those bonds from which the appropriation was made and to accumulate and maintain the required reserve attributable to those bonds. The agreement shall provide that, to the extent not required for costs of completing the buildings, income from investment of the bond proceeds prior to expenditure and from investment of the reserve shall be credited against the division's payment obligation. The agreement shall allow for accumulation of the reserve during the first year the bonds are outstanding. The payments under the agreement shall be made from revenues and moneys of the division available therefor."

Section 10. Section 17-5-421, MCA, is amended to read:

"17-5-421. Bonds for Montana college of mineral science and technology. (1) The board of examiners is authorized to issue and sell long-range building program bonds upon the conditions and in the manner stated in this part, in an amount not exceeding $2,275,000, over and above the amount of the long-range building program bonds outstanding on January 1, 1977, for the purpose of paying costs of acquiring, constructing, and equipping a physical education facility for and to be located at Montana college of mineral science and technology. The issuance and sale of the bonds shall be subject to an undertaking by the board of regents to pay to the state treasurer for deposit in the *debt service* account established pursuant to 17-5-405, from the sources hereinafter defined, amounts sufficient to pay as due the principal of and interest on the bonds; provided, however, this undertaking shall be enforceable only by the state treasurer and shall not be enforceable by the holders of such bonds. The payments by the board of regents shall be made from available revenues derived from resident and nonresident student building fees charged to students enrolled at Montana college of mineral science and technology, interest and income from lands granted by the United States of America to the state pursuant to 25 Stat. 676 for the establishment and maintenance of the college and the operation of the physical education facility, and other revenue producing residence and student union facilities at the college, subject to the prior pledge and appropriation of such revenues to the payment of other obligations of the board of regents.

(2) The proceeds of the bonds authorized by subsection (1) of this section shall be deposited in the *capital projects fund* created by 17-5-401."

Section 11. Section 17-5-422, MCA, is amended to read:

"17-5-422. Bonds for state capitol improvements. (1) The board of examiners is authorized to issue and sell long-range building program bonds, upon the conditions and in the manner stated in this part, in the principal amount not to exceed $5 million, for the purpose of financing costs of improvements to the state capitol.

(2) There is appropriated to the *debt service* account established pursuant to 17-5-405 from the revenues of the capitol building land grant

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(exclusive of income derived from investment of accumulated revenues) in each fiscal year during the term of the bonds authorized by subsection (1) an amount sufficient to pay the principal of and interest on the bonds as due and to establish and maintain required reserves therefor. The appropriation shall be reduced in each fiscal year by the amount, if any, of income received in that year from investment of the reserve attributable to the bonds. The appropriation made by this section is solely for the benefit of the state and is not enforceable by the holders of the bonds."

Section 12. Section 17-5-503, MCA, is amended to read:

"17-5-503. Amount authorized and reservation of future authorizations — payment. The aggregate amount of highway bonds authorized by this part for the purpose expressed in 17-5-501 shall not exceed the sum of $7,400,000. The state reserves the privilege of issuing additional highway bonds, when and if authorized by law, for this purpose and for any other purpose for which money derived from the sources described in Article VIII, section 6, of the constitution is authorized by that section to be expended. The board of examiners is also authorized to issue additional highway bonds for the purpose of refunding bonds issued pursuant to or as contemplated in this chapter, in amounts not exceeding the principal amount of the bonds refunded, when the board determines that the refunding of any outstanding bonds is in the best interests of the state. All bonds issued for the purposes contemplated in this section shall be payable from the same *debt service* account on a parity as to both principal and interest with the bonds authorized in 17-5-501, provided that in the issuance of each series of such bonds the amount, maturities, and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on such bonds then outstanding (except bonds refunded) and on the series so to be issued will not exceed 25% of the amount collected during the then next preceding fiscal year from the tax or taxes pledged by law to the *debt service* account at the time of such issuance. The provisions of this section shall not constitute a covenant with the holders of any bonds issued hereunder."

Section 13. Section 17-5-506, MCA, is amended to read:

"17-5-506. Deposit and use of proceeds. All proceeds of bonds issued hereunder shall be deposited in a separate highway *capital projects fund* which is created within the *capital projects* fund *type* established by 17-2-102, referred to herein as the *"highway capital projects fund"*, and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury. The proceeds of the bonds authorized in 17-5-501 shall be used only to pay costs of acquiring land for and erecting and equipping the buildings herein referred to, upon order of the department of administration acting within the limits of the authority conferred upon it by the legislature and said proceeds are appropriated for the purpose of the capital items herein described. The proceeds of any additional bonds authorized as contemplated in 17-5-503, except refunding bonds, shall be used only for purposes authorized under the provisions of Article VIII, section 6, of the constitution, upon order of the department acting within the limits of the authority conferred upon it by the legislature."

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Section 14. Section 17-5-507, MCA, is amended to read:

"17-5-507. State pledge of gasoline tax — use. (1) The state pledges and appropriates and directs to be credited as received to the *debt service* account, as herein defined, that portion of the net proceeds from the collection of gasoline taxes which may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxation. The term "net proceeds", as used herein, means all funds on hand in the treasury of the state as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, enacted by section 3, Chapter 369, Laws of 1969, as amended by section 1, Chapter 202, and by section 2, Chapter 204, Laws of 1971, and by section 90, Chapter 516, Laws of 1973, or by any subsequent enactment, less the amount of all refunds of such taxes for which applications have been made pursuant to law but which have not yet been paid or rejected. The term *"debt service* account", as used herein, means a separate highway *fund* which is created within the *debt service* fund *type* established by 17-2-102 and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest thereon when due, so long as any such bonds or interest remain unpaid.

(2) Money in the *debt service* account shall be used: first, to pay interest and principal when due on highway bonds; second, to accumulate a reserve in the amount required below, for the further security of such payments; and third, to maintain this reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal which will become due on all such bonds which are then outstanding in any subsequent fiscal year.

(3) Money at any time received in the *debt service* account in excess of the principal, interest, and reserve requirements stated in subsection (2) shall be transferred by the treasurer to *a state special* revenue fund, highway account. If the balance at any time on hand in the *debt service* account is not sufficient for compliance with subsection (2), the treasurer shall credit to said account an amount sufficient to restore said balance from the next receipts of net proceeds from the collection of gasoline taxes."

Section 15. Section 17-5-608, MCA, is amended to read:

"17-5-608. Employment security building account. To provide for the payment of the interest and principal of the bonds authorized by 17-5-601 through 17-5-610, there is created an employment security commission building account within *a debt service* fund in the state treasury. All sums of money dedicated and appropriated to the payment of the principal and interest of the bonds and the erection of the addition to the employment security building, including the landscaping and paving around it, shall be paid into that account."

Section 16. Section 17-5-618, MCA, is amended to read:

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"17-5-618. Employment security building account. To provide for the payment of the interest and principal of the bonds authorized by 17-5-611 through 17-5-620, there is created an employment security commission building account within the *debt service* fund *type* in the state treasury. All sums of money dedicated and appropriated to the payment of the principal and interest of the bonds and the erection of the buildings, including the landscaping and paving around them, shall be paid into that account."

Section 17. Section 17-5-702, MCA, is amended to read:

"17-5-702. Purpose and intent. (1) The purpose of the coal severance tax trust fund bond provisions of this part is to establish the authority to issue and sell coal severance tax bonds that have been approved by act of the legislature for financing specific water resource development projects and activities in the state authorized by the legislature and to guarantee redemption of such bonds by revenue derived from the receipts from the coal severance tax imposed by Title 15, chapter 35, part 1, and such other money as the legislature may from time to time determine.

(2) The legislature intends that projects to be financed by coal severance tax bonds include water resource development projects and activities as part of the water development program established in Title 85, chapter 1, part 6. The legislature further intends that the income from water resource development projects and activities in excess of the amount required for debt service and operation and maintenance of those projects and activities be deposited in the water development *state special revenue* account established in 85-1-604."

Section 18. Section 17-5-703, MCA, is amended to read:

"17-5-703. Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following *funds*:

(a) a coal severance tax bond *fund* into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) a coal severance tax permanent *fund*; and

(c) a coal severance tax income *fund*.

(2) On each December 31 and June 30 the state treasurer shall transfer to the coal severance tax permanent *fund* all money in the coal severance tax bond *fund* except the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond *fund* on the next ensuing semiannual payment date."

Section 19. Section 17-5-704, MCA, is amended to read:

"17-5-704. Investment of funds. (1) Money in the coal severance tax bond *fund*, the coal severance tax permanent *fund*, and the coal severance tax income *fund* must be invested in accordance with the investment standards for coal severance tax funds except as provided in subsection (2). Income and earnings from all *funds* must be transferred to and retained in the coal severance tax income *fund*.

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(2) Beginning on July 1, 1983, the legislature shall appropriate 15% of the income and earnings from all *funds* to be deposited to the coal severance tax permanent *fund* each year. The funds appropriated to the coal severance tax permanent *fund* under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature."

Section 20. Section 17-5-705, MCA, is amended to read:

"17-5-705. Pledge of coal severance tax bond fund. The money in the coal severance tax bond *fund* is pledged to the payment of the principal and interest on all state of Montana coal severance tax bonds. All bonds issued after July 1, 1981, wherein the money in the coal severance tax bond *fund* is pledged for their retirement shall be called "state of Montana coal severance tax bonds"."

Section 21. Section 17-5-708, MCA, is amended to read:

"17-5-708. Special fund revenues. (1) If a law authorizing a coal severance tax bond issue for a specific purpose and in a specific amount contemplates the pledge and receipt of revenues, assets, or money other than or in addition to the money in the coal severance tax bond *fund*, then the money derived from such pledged revenues, assets, and money must be paid into a special bond *fund* for the benefit of such bonds, which must be part of *a debt service* fund of the state treasury fund structure.

(2) Money must be withdrawn from the coal severance tax bond *fund* and paid to the special bond fund as necessary to provide for payment of principal and interest on the coal severance tax bonds secured by a pledge of the special *bond fund*."

Section 22. Section 17-5-709, MCA, is amended to read:

"17-5-709. Continued tax deposit limit on additional bonds. (1) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal severance tax bond *fund* of the coal severance tax which, together with such other revenues, assets, and money as may be deposited to one or more special bond *funds* pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.

(2) The board of examiners may issue no coal severance tax bonds unless the aggregate amount of coal severance tax bonds outstanding, including the proposed issue and any other coal severance tax bonds authorized but not yet issued, can be serviced with no more than two-thirds of the annual deposits into the coal severance tax bond *fund*, as determined by the average of the deposits during the preceding 3 fiscal years, together with the average of the aggregate amount of revenues, assets, or money deposited in one or more special bond *funds* used to pay debt service on outstanding coal severance tax bonds during the preceding 3 fiscal years.

(3) The provisions of this section may not be modified so as to reduce the security for any coal severance tax bonds while such bonds are outstanding."

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Section 23. Section 17-5-710, MCA, is amended to read:

"17-5-710. Form — principal and interest — fiscal agent — deposit of proceeds. (1) Each series of coal severance tax bonds must be issued by the board of examiners at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates, maturing at such times not exceeding 40 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state as the board of examiners shall determine, subject to the limitations contained in this part.

(2) In all other respects the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Coal severance tax bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board of examiners is authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

(5) All proceeds of a state of Montana coal severance tax bonds issue shall be deposited in a *capital projects fund or a state special revenue account* established for that bond issue, except that any premiums and accrued interest received shall be deposited in a *debt service* fund established for that bond issue."

Section 24. Section 20-25-433, MCA, is amended to read:

"20-25-433. Sale and issuance of bonds — requirements. The sale and issuance of bonds pursuant to 20-25-432 shall be subject to an undertaking by the board of regents to pay the state treasurer for deposit in the *debt service* fund established pursuant to 17-5-405 amounts sufficient to pay as due the principal of and interest on the bonds. The undertaking by the board of regents may be in the form of a revenue bond or bonds issued by the board of regents to the board of examiners or it may be in the form of an agreement between the board of regents and board of examiners. The payments under any such bonds or agreement shall be from such revenues, fees, and income as are lawfully available to the board of regents to pay the costs of facilities to be financed by the long-range building program bonds hereby authorized or to pay debt service on obligations of the board of regents incurred with respect to such facilities and costs. All agreements or bond arrangements entered into between the board of regents and the department of administration will specifically require the board to maintain debt service payments and the reserve requirement to the long-range building *debt service* fund. If enrollment reductions should endanger these payments, the regents shall insure continued payments through budget adjustments which include fee increases.

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With the approval of the board of examiners, any undertaking and the payments thereunder may be subordinated to other obligations of the board of regents upon such terms as the board of examiners considers appropriate. The undertaking of the board of regents shall be solely for the benefit of and enforceable by the state and may not be enforceable by the holders of the long-range building program bonds. The bonds may be issued in one or more series."

Section 25. Section 20-25-434, MCA, is amended to read:

"20-25-434. Deposit and expenditure of bond proceeds. The proceeds of the bonds authorized by 20-25-431 and 20-25-432 shall be deposited in the *capital projects fund* created by 17-5-401(2). No construction or related bids shall be let until the bond proceeds are deposited in the *capital projects* fund. The amount of such proceeds is appropriated from the *capital projects fund* to the board of regents for the purpose for which the bonds are authorized."

Section 26. Section 60-3-201, MCA, is amended to read:

"60-3-201. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the *debt service* fund established by 17-2-102. Subject to that provision, 9/10 of 1% of all money shall be deposited in the state park account and ½ of 1% of all money shall be deposited in a snowmobile account in *a state special* revenue fund. The remainder of the money shall be used by the department of highways on the federal-aid highways in this state selected and designated under Title 23, U.S.C., and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads which have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 60-3-204 through 60-3-206. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in *a state special* revenue fund shall be used only for the creation, improvement, and maintenance

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of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile *account* each year shall be used to promote snowmobile safety. Thereafter, 10% of the amount deposited in the snowmobile *account* shall be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than ½ of 1% is used for propelling snowmobiles on public lands of this state."

Section 27. Section 60-11-1107, MCA, is amended to read:

"60-11-1107. Bond accounts — appropriation. (1) There is a railroad rehabilitation account in *a state special revenue* fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rehabilitation account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rehabilitation reserve *debt service* fund *as* provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rehabilitation reserve *debt service fund*, and all money deposited in the *debt service fund* is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1106, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts notwithstanding the provisions of subsections (1) and (2)."

Section 28. Section 76-15-507, MCA, is amended to read:

"76-15-507. Investment of funds. The board of supervisors shall have the power and authority to direct the investment of funds in a *debt service* fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But all such securities shall be converted into cash in time to meet the principal on the bonds payable from such *debt service* fund promptly at their maturity."

Section 29. Section 85-1-102, MCA, is amended to read:

"85-1-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(2) "Cost of works" means the cost of construction; the cost of all lands, property, rights, easements, and franchises acquired which are

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deemed necessary for the construction; the cost of all water rights acquired or exercised by the department in connection with those works; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction; cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(5) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605 but does not include a governmental entity such as an agency, local government, or political subdivision of the state, the United States, or any agency thereof, or any other governmental entity.

(6) "Project" means any one of the works herein defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(7) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(8) "Water development account" means a separate account created by 85-1-617 within *a state special revenue* fund of the state treasury to finance loans under the provisions of the water development program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients from proceeds of bonds issued under part 6 of this chapter.

(9) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to such purposes as the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

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(10) "Water development *state special revenue* account" means a separate account created by 85-1-604 within *a state special* revenue fund of the state treasury for the purposes of the water development program as set forth in 85-1-604.

(11) "Water development project" means a project as defined in subsection (6), except that water development projects are not limited to projects owned or operated by the department.

(12) "Water development *debt service fund*" means a separate *fund* created by 85-1-603 within the *debt service* fund *type* of the state treasury to be used as provided in 85-1-619.

(13) "Works" means all property, rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems and includes all such works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection."

Section 30. Section 85-1-304, MCA, is amended to read:

"85-1-304. Lien upon bond proceeds. All moneys received from any bonds issued pursuant to 85-1-301 and 85-1-303 shall be applied solely to the payment of the cost of the works or to the appurtenant *debt service* fund and to the "administration fund", as hereinafter provided, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the holders of the bonds or the trustee hereinafter provided for in respect of such bonds."

Section 31. Section 85-1-307, MCA, is amended to read:

"85-1-307. Provisions to secure payment of bonds. In connection with the issuance of the bonds for the purpose of paying in whole (or as supplemented by a grant from the United States or any instrumentality or agency thereof) the cost of the works or project or in order to secure the payment of the bonds, the board may:

(1) pledge all or any part of the income, profit, and revenue of the works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of all or any part of the works or project and covenant to pay the income, profit, and revenue into the appropriate water fund and *debt service* fund;

(2) covenant against pledging all or any part of the income, profit, and revenue of the works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service and from

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the operation, lease, sale, or other disposition of all or any part of the works or project;

(3) covenant against mortgaging all or any part of the works or project or against permitting or suffering any lien thereon;

(4) covenant to fix and establish such prices, rates, and charges for water and other services made available in connection with the works or project so as to provide at all times funds which will be sufficient to:

(a) pay all costs of operation and maintenance of the works or project, together with necessary repairs thereto;

(b) meet and pay the principal and interest of all the bonds as they severally become due and payable; and

(c) create such reserves for the principal and interest of all the bonds and for the meeting of contingencies in the operation and maintenance of the works or project as the board determines;

(5) make such further covenants as to such prices, rates, and charges as the board determines;

(6) create special funds, in addition to those required by this chapter, for moneys reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of the works or project and determine the manner in which and the depositary or depositaries in which those funds shall be deposited and the manner in which they shall be secured, and it is lawful for any bank or trust company incorporated under the laws of the state to act as that depositary and to furnish such indemnifying bonds or to pledge such securities as required by the board;

(7) provide for the replacement of lost, destroyed, or mutilated bonds;

(8) covenant against extending the time for the payment of the principal or interest on any of the bonds, directly or indirectly, by any means or in any manner;

(9) prescribe and covenant as to the events of default and terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;

(10) covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(11) vest in a trustee or trustees the right to enforce any covenant made to secure or to pay the bonds or to foreclose any trust indenture in relation thereto, provide for the powers and duties of the trustee or trustees, limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce the covenant or exercise the right of foreclosure;

(12) make such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure the bonds or, in the absolute discretion of the board, to make the bonds more marketable, notwithstanding that the covenants, acts, or things may not be enumerated or expressly authorized herein;

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(13) do all things in the issuance of the bonds and provide for their security not inconsistent with the constitution of Montana."

Section 32. Section 85-1-321, MCA, is amended to read:

"**85-1-321. Funds in general.** The board shall create a fund to be known as the "administration fund" and shall also create three separate funds in respect of the bonds of each series, one fund to be known as the "construction fund, series ....", another fund to be known as the "water fund, series ....", and another fund to be known as the "*debt service* fund, series ....", each fund to be identified by the same series letter or letters as the bonds of the series. The moneys in each fund shall be deposited in such depository or depositories and secured in such manner as determined by the board. It is lawful for any bank or trust company incorporated under the laws of this state to act as the depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the board. A separate account shall be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project shall be charged by the department in such proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which the expenditures were incurred."

Section 33. Section 85-1-322, MCA, is amended to read:

"**85-1-322. Construction capital projects funds.** The proceeds of the bonds of each series issued under 85-1-301 and 85-1-303 shall be placed to the credit of the appropriate construction *capital projects* fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction *capital projects* fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in the fund and moneys received by way of grant from the United States or from any other source for the construction of the works. The moneys in each construction *capital projects* fund shall be paid out or disbursed in such manner as may be determined by the department, subject to this chapter, to pay the cost of the works. Any surplus which may remain in any construction *capital projects* fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate *debt service* fund hereinafter provided for."

Section 34. Section 85-1-323, MCA, is amended to read:

"**85-1-323. Debt service funds.** (1) The board shall provide, in the proceedings authorizing the issuance of each series of bonds or in the trust indenture securing the same, for the paying into the appropriate *debt service* fund at stated intervals all moneys then remaining in the water fund after paying all costs of operation, maintenance, and repairs of the works. All moneys in each *debt service* fund shall be pledged for the payment of and used only for the purpose of paying:

(a) the interest upon the bonds as such interest shall fall due;

(b) the necessary fiscal agency charges for paying bonds and interest;

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(c) the principal of the bonds as they fall due; and

(d) any premiums upon bonds retired by call or purchase as herein provided.

(2) Prior to the issuance of the bonds of each series, the board may provide by resolution or by such trust indenture for using the *debt service* fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof but not exceeding the price, if any, at which the same shall at the next interest date be payable or redeemable, and all bonds redeemed or purchased shall forthwith be canceled and no bonds shall be issued in place thereof. The moneys in each *debt service* fund, less such reserve as may be provided for in the resolution authorizing the bonds or in the trust indenture for the payment of interest and/or principal, if not used within a reasonable time for the purchase of bonds for cancellation as provided above, shall be applied to the redemption of bonds then subject to redemption at the redemption price then applicable."

Section 35. Section 85-1-603, MCA, is amended to read:

"85-1-603. Water development debt service fund created — coal severance tax allocated. (1) There is created a water development *debt service fund* within the *debt service* fund *type* established in 17-2-102.

(2) The state pledges and allocates and directs to be credited to the water development *debt service fund*, as received, 1 ¼ % of all money from time to time received from the coal severance tax collected under Title 15, chapter 35, and remaining after allocation of such tax to the trust fund established under Article IX, section 5, of The Constitution of the State of Montana."

Section 36. Section 85-1-604, MCA, is amended to read:

"85-1-604. Water development state special revenue account created — revenues allocated — limitations on appropriations from account. (1) There is created a water development *state special revenue* account within *a state special* revenue fund established in 17-2-102.

(2) There shall be paid into the water development *state special revenue* account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust *fund* as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the water development *debt service fund* above debt service requirements as provided in and subject to the conditions of 85-1-619.

(3) Appropriations may be made from the water development *state special revenue* account for the following purposes and subject to the following conditions:

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(a) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(a) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(b).

(b) An amount less than or equal to that paid into the account from the resource indemnity trust *fund* plus any excess from subsection (3)(a) and only that amount may be appropriated from the account for:

(i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;

(ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;

(iii) the development of the hydropower potential of state-owned dams;

(iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;

(v) the promotion of the development of offstream and tributary storage;

(vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;

(vii) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and

(viii) any other expenditures that meet the policies and objectives of the state water development program.

(c) An amount less than or equal to that paid into the account from the water development *debt service fund* and only that amount may be appropriated from the account for loans and grants for water development projects and activities and for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in administering the loans and grants."

Section 37. Section 85-1-605, MCA, is amended to read:

"85-1-605. Grants and loans to state and local governments. (1) The department may recommend to the legislature that grants and loans be made from coal severance tax proceeds deposited in the water development *state special revenue* account and loans be made from water development bond proceeds deposited in the water development account to a department, agency, board, commission, or other division of state government or to a city, county, or other political subdivision or local government body of the state. The legislature may approve by appropriation or other appropriate means those grants and loans it finds consistent with the policies and purposes of the program.

(2) The grants and loans provided for by this section may be made for the purchase, lease, development, or construction of water development

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projects and activities for the conservation, management, use, development, or protection of the water and related agricultural, land, fish, wildlife, and water recreation resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for and the rehabilitation, expansion, and modification of water development projects; for other water development projects and activities that will enhance the water resources of the state; and for similar purposes approved by the legislature."

Section 38. Section 85-1-606, MCA, is amended to read:

"85-1-606. Grants and loans to private persons. (1) To encourage the construction and development of water development projects and activities, the department may make grants and loans to private persons from funds appropriated from the water development *state special revenue* account and may make loans to private persons from the water development account.

(2) The department shall publicize the statutes and rules governing grants and loans to private persons for water development projects and activities, set and publicize application deadlines, and accept applications for grants and loans.

(3) The department shall review, evaluate, and select water development projects and activities for which grants or loans may be awarded."

Section 39. Section 85-1-613, MCA, is amended to read:

"85-1-613. Limits on loans. (1) No loan for a water development project or activity may be made from the water development *state special revenue account* or *water development* account that exceeds the least of $100,000, 10% of the estimated total funds potentially available for loans in the water development *state special revenue account* and *water development account* in the biennium in which the loan will be made, or 80% of the fair market value of the security given therefor. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors it considers important.

(2) The period for repayment of loans may not exceed 30 years.

(3) The board shall from time to time establish the interest rate at which loans may be made under this part."

Section 40. Section 85-1-614, MCA, is amended to read:

"85-1-614. Limits on grants from water development state special revenue account. The maximum grant awarded to a private person may not exceed 5% of the estimated total funds potentially available in the water development *state special revenue* account for grants in the biennium in which the grant will be made or 25% of the total project cost, whichever is less."

Section 41. Section 85-1-615, MCA, is amended to read:

"85-1-615. Security interests. The state has a lien upon a project constructed with money from the water development *state special revenue*

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account or *water development* account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens."

Section 42. Section 85-1-617, MCA, is amended to read:

"85-1-617. Issuing bonds. (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell water development bonds of the state in the amount and manner it considers necessary and proper to finance the water development loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of water development bonds may be issued by the board of examiners, upon request of the board of natural resources and conservation, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of water development bonds, the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the water development *debt service fund* will in the judgment of the board of examiners be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest

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coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) There is created a water development account within *a state special revenue* fund established in 17-2-102.

(6) All proceeds of bonds issued under this section, other than refunding bonds, must be deposited in the water development account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development *debt service fund* and must be applied to the payment, redemption premiums, and interest on the particular bond issue from whose proceeds the loan was made. All proceeds of refunding bonds must be deposited in the water development *debt service fund* and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Section 43. Section 85-1-619, MCA, is amended to read:

"85-1-619. Debt service fund — pledge and administration of sufficient balance. (1) The legislature may levy, impose, assess, and pledge and appropriate to the water development *debt service fund* any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the water development *debt service fund*, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that *fund* and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the water development *debt service fund* must be used first, to pay interest, principal, and redemption premiums when due and payable with respect to water development bonds; second, to accumulate a reserve for the further security of such payments, to the amount required each month to meet those payments due within 12 months thereafter; and third, to restore the reserve to this amount after each payment.

(3) After the reserve provided for in subsection (2) has been accumulated in the water development *debt service fund*, money at any time received in the water development *debt service fund* in excess of that amount must be transferred by the treasurer to the water development

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state special revenue account. If the balance on hand at any time in the water development *debt service fund* is not sufficient to accumulate required reserves under subsection (2) and is not restored to the required amount within 3 months thereafter from funds specifically pledged and appropriated to the water development *debt service fund*, the treasurer in accordance with the pledge of the full faith and credit and taxing powers of the state shall transfer an amount sufficient to restore the required balance from the general fund to the water development *debt service fund*."

Section 44. Section 85-1-620, MCA, is amended to read:

"85-1-620. Water development refunding bonds. (1) The board of examiners may issue refunding bonds at such times and in such amounts, if any, as may be necessary to pay principal or interest due that cannot be paid from funds then on hand in the water development *debt service fund*. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of extending the maturities thereof so far as determined by the board of examiners to be necessary to assure that the funds then pledged to the water development *debt service fund* will be sufficient for payment of principal and interest due in subsequent years. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable thereon.

(2) No refunding bonds may be issued and sold more than 3 months before all bonds refunded thereby mature or are called for redemption unless the proceeds thereof, with any other funds in the water development *debt service fund* that are needed and available for the purpose or securities purchased from such proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow, for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds, so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(3) No new debt may be created by the issuance of refunding bonds in accordance with this section, but such refunding bonds shall evidence the debt previously created and shall be secured by the pledge of the full faith and credit and taxing powers of the state and by the further provisions of this part in the same manner as the bonds refunded thereby."

Section 45. Section 85-1-623, MCA, is amended to read:

"85-1-623. Authorization of water development bonds. The legislature, through the enactment of this section by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $5 million and the issuance and sale of water development bonds in this amount for the purpose of providing funds appropriated to the water development account for loans as provided in the water development program."

Section 46. Section 90-2-102, MCA, is amended to read:

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"90-2-102. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Renewable resource development program" means such developments in the public interest of renewable natural resources of the state as shall from time to time be acquired, constructed, and financed from funds appropriated to the *account and fund* referred to in this section and from the proceeds of bonds issued in anticipation of the receipt of these funds.

(2) "Renewable resource development bonds" means all series of bonds authorized by law to be issued pursuant to 90-2-121 to finance any part of the renewable resource development program or to refund any such bonds.

(3) "Renewable resource development account" means a separate account which is created within *a state special revenue* fund established in 17-2-102 and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the renewable resource development program, upon order of the board of natural resources and conservation under authority and within limitations provided by law.

(4) "Renewable resource development bond *fund*" means a separate *fund* which is created within the *debt service* fund *type* established in 17-2-102 and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only as provided for herein.

(5) "Treasurer" means the state treasurer."

Section 47. Section 90-2-112, MCA, is amended to read:

"90-2-112. Bond proceeds not for grants. Unless specifically authorized by the legislature, no bond proceeds may be used for the purpose of making grants. Grants may be made only from such sums as are deposited in the *debt service* fund from the collection of the coal severance tax as provided in 90-2-124."

Section 48. Section 90-2-121, MCA, is amended to read:

"90-2-121. Issuing bonds. (1) Within the limits authorized by 90-2-127 and within the further limitations in this section, the board of examiners may issue and sell bonds of the state in such manner as it considers necessary and proper to finance the renewable resource development program. The full faith and credit and taxing powers of the state shall be pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of such bonds shall be issued by the board of examiners upon request of the board of natural resources and conservation in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at

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such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the *debt service* fund will in the judgment of the board be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects the board of examiners is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) All proceeds of bonds issued hereunder, other than refunding bonds, shall be deposited in the *renewable resource development* account, except that any principal and accrued interest received in repayment of the loans provided for in this part shall be deposited in the *debt service* fund. All proceeds of refunding bonds shall be deposited in the *debt service* fund and applied to the payment and redemption of outstanding bonds issued hereunder as directed by the board, whether at maturity or on any previous date on which they may be prepaid according to their terms."

Section 49. Section 90-2-122, MCA, is amended to read:

"90-2-122. Refunding bonds. (1) The board of examiners is authorized to issue refunding bonds at such times and in such amounts, if any, as may be necessary to pay principal or interest due which cannot be paid from funds then on hand in the *debt service* fund. It may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of extending the maturities thereof so far as determined by the board to be necessary to assure that the funds then pledged to the *debt service* fund will be sufficient for payment of principal and interest due in subsequent years. It may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable thereon.

(2) No refunding bonds may be issued and sold more than 3 months before all bonds refunded thereby mature or are called for redemption unless the proceeds thereof, with any other funds in the *debt service* fund

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which are needed and available for the purpose, or securities purchased from such proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(3) No new debt may be created by the issuance of refunding bonds in accordance with this section, but such refunding bonds shall evidence the debt previously created and shall be secured by the pledge of the full faith and credit and taxing powers of the state and by the further provisions of this part in the same manner as the bonds refunded thereby."

Section 50. Section 90-2-123, MCA, is amended to read:

"90-2-123. Debt service fund. (1) The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the *debt service* fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the *debt service* fund, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that *fund*, and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the *debt service* fund shall be used first to pay interest, principal, and redemption premiums when due and payable with respect to renewable resource development bonds; second to accumulate a reserve for the further security of such payments, to the amount required each month to meet those payments due within 12 months thereafter; and third to restore the reserve to this amount after each payment.

(3) After the reserve provided for in subsection (2) above is in the *debt service* fund, money at any time received in the *debt service* fund in excess of that amount shall be transferred by the treasurer to the *renewable resource development* account. If the balance at any time on hand in the *debt service* fund is not sufficient for compliance with subsection (2) and is not restored to the required amount within 3 months thereafter from funds specifically pledged and appropriated to the *debt service* fund, the treasurer shall transfer thereto from the general fund an amount sufficient to restore the required balance."

Section 51. Section 90-2-124, MCA, is amended to read:

"90-2-124. Appropriation of coal severance tax. The state pledges and appropriates and directs to be credited to the *debt service* fund, as received, 1 ¼ % of all money from time to time received from the collection of the severance tax and remaining after allocation of such tax to the trust fund established under section 5, Article IX, of the Montana

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constitution and such additional amount thereof, if any, as may be required from time to time to provide sufficient funds for the purposes stated in 90-2-123(2), provided that no more than 1 ¼ % of such tax collections shall be deemed to be pledged for the purpose of 90-2-121(3)."

Section 52. Section 90-2-125, MCA, is amended to read:

"**90-2-125. Renewable resource development account.** The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the *renewable resource development* account any tax, charge, fee, rental, or other income from any source."

Section 53. Section 90-2-126, MCA, is amended to read:

"**90-2-126. Costs and expenditures.** (1) The costs of the board of examiners, the board of natural resources and conservation, and the department of natural resources and conservation incurred in the administration of this part shall be met from the *renewable resource development* account moneys which shall from time to time as needed be transferred to *a state special* revenue *account* established for that purpose.

(2) The board of examiners and the department of natural resources may, within the limits of appropriation made therefore, make necessary expenditures for the purchase or hire of such personnel, facilities, and services as they may from time to time find necessary for the proper administration of this part."

Section 54. Section 90-2-127, MCA, is amended to read:

"**90-2-127. Authorization of bonds.** The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $5 million and the issuance and sale of renewable resource development bonds in this amount for the purpose of providing funds appropriated to the *renewable resource development* account for developments included in the renewable resource development program."

Section 55. **Code commissioner to make changes.** Whenever a reference to a treasury fund type, fund, or account appears in any new material enacted by the 48th legislature and approved by the governor, whether in new sections or amended sections, the code commissioner, in consultation with the department of administration and the legislative fiscal analyst, shall change the reference in that material as necessary to reflect the fund structure provided for in 17-2-102. The code commissioner may make other incidental changes to reflect the intent of [this act] without changing the meaning.

Section 56. **Effective date.** This act is effective July 1, 1983.

Approved March 30, 1983.

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CHAPTER NO. 299

AN ACT TO REVISE AND CLARIFY THE DUTIES OF MOTOR VEHICLE OPERATORS AND LAW ENFORCEMENT OFFICERS CONCERNING THE FILING OF ACCIDENT REPORTS; TO PROVIDE A PENALTY FOR FAILURE TO FILE A REPORT; AMENDING SECTIONS 61-7-109 AND 61-7-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-7-109, MCA, is amended to read:

"61-7-109. Written reports of accidents — additional information — form of report. (1) The operator of any motor vehicle which is in any manner involved in an accident within this state in which any person is killed or injured or in which damage to the property of any one person in excess of $250 is sustained shall, within 10 days after such accident, report the matter in writing to the division *unless the accident was investigated and reported by a law enforcement officer as provided in subsection (3).*

(2) The division may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident *in which any person is killed or injured or in which damage to the property of any person exceeds $250,* either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall within 10 days after completing the investigation forward a written report of the accident to the division.

(4) The form of the accident report required under this section shall contain information sufficient to enable the division to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this part."

Section 2. Section 61-7-111, MCA, is amended to read:

"61-7-111. Accident report forms. (1) The division shall prepare and, upon request, supply to police departments, coroners, medical examiners, sheriffs, garages, and other suitable agencies or individuals forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the causes, conditions then existing, and the persons and vehicles involved.

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(2) Every accident report required to be made in writing shall be made on the appropriate form approved by the division and shall contain all of the information required therein unless not available.

(3) The division may suspend the license or permit to drive of any resident or the nonresident operating privilege of any person failing to report an accident as herein provided until such report has been filed."

Section 3. **Penalty for violation.** (1) A person violating any provision of 61-7-104 through 61-7-110 or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, the offender shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

(2) Subject to the limitations of 46-18-231(3), an offender who fails to pay a fine shall be imprisoned in the county jail in the county in which the offense was committed, and the punishment shall be commuted at the rate of 1 day's incarceration for each $10 of the fine.

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 61, chapter 7, part 1, and the provisions of Title 61, chapter 7, apply to section 3.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved March 30, 1983.

CHAPTER NO. 300

AN ACT PROVIDING THAT THE INSURANCE COMMISSIONER MAY IMPOSE AN ADMINISTRATIVE PENALTY UPON AN INSURER FOR FAILING TO PAY MEDICAL OR HEALTH CLAIMS IN A TIMELY MANNER; PROVIDING THAT THE COMMISSIONER MAY INQUIRE INTO THE CAUSE OF CERTAIN LATE PAYMENTS; PROVIDING THAT INSURERS SHALL PAY THE INSURED INTEREST ON CERTAIN CLAIMS THAT ARE NOT PAID IN A TIMELY MANNER; DEFINING "PROOF OF LOSS" AND "INSURER".

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** In [this act] the following definitions apply:

(1) "Insurer" means any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit health care corporation, health maintenance organization,

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self-insurer, or third-party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state.

(2) "Proof of loss" means any document accepted by an insurer upon which payment of benefits is made.

Section 2. **Time for payment of claims.** (1) If within 30 days after receipt of a proof of loss, the insurer has not paid the claim for benefits provided in the policy or contract or notified the insured or the insured's assignee of the reasons for failure to pay the claim in full and has not requested additional information or documents, the insured or the assignee may report the delay to the commissioner, who may then investigate to determine if the insurer has failed to pay the claim within 30 days of its receipt without good reason and, if so, whether such delay is a general course of business practice of the insurer.

(2) Upon the commissioner's determination that the delay is a general course of business practice and for a year thereafter unless earlier rescinded by the commissioner, all claims for benefits not paid by that insurer within 30 working days after receipt by the insurer, without good reason as determined by the commissioner, shall obligate the insurer to pay interest at 18% a year from the date the commissioner determines that the delay became unreasonable.

Section 3. **Administrative penalty for failure to pay promptly.** (1) The commissioner may, after a hearing, impose an administrative fine as set forth in subsection (2) on an insurer if he finds that the insurer as a general course of business practice in this state fails to:

(a) use due diligence in processing all claims;

(b) pay claims in a timely manner;

(c) provide proper notice when required with respect to the reasons for the insurer's failure to make claim payments when due; or

(d) pay, without just cause, proper claims arising under coverage provided by its policies, whether such claims are in favor of an insured, in favor of a third person with respect to the liability of an insured to such third person, or in favor of any other person entitled to the benefits of a policy.

(2) The administrative penalty imposed for violations of [this act] may not exceed $1,000 for each separate violation.

(3) If an insurer can demonstrate that it has consistently paid 90% of the total amount outstanding in claims within 20 working days and all of the amount within 30 working days of receipt of claims during the 6-month period immediately preceding the hearing date, the insurer is not subject to the fine imposed under subsection (2).

Section 4. **Right of privacy guaranteed.** Nothing in [this act] requires the commissioner to disclose information in violation of the Insurance Information and Privacy Protection Act.

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Section 5. **Rulemaking authority.** The commissioner shall make rules, under the Montana Administrative Procedure Act, necessary to implement [this act].

Section 6. **Codification instruction.** This act is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to this act.

Approved March 30, 1983.

CHAPTER NO. 301

AN ACT TO ALLOW THE POSSESSION AND TRANSPORTATION OF EAGLE PARTS AND PLUMAGE FOR RELIGIOUS PURPOSES BY MEMBERS OF INDIAN TRIBES WHEN SUCH POSSESSION OR TRANSPORTATION IS PERMITTED BY FEDERAL LAW; AMENDING SECTION 87-5-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-201, MCA, is amended to read:

"87-5-201. Protection of wild birds and their nests and eggs. *(1)* It is unlawful for a person to hunt, capture, kill, possess, purchase, offer or expose for sale, ship, or transport any wild bird, other than a game bird, or any part of the plumage, skin, or body of the bird, irrespective of whether the bird was captured or killed within the state, or to take or destroy the nest or eggs of a wild bird, except under a certificate, falconer's license, or permit issued by the director.

(2) This section does not apply to:

(a) the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, magpies, and other birds the department designates or to the taking or destruction of their nests and eggs;

(b) the possession or transportation of parts or plumage of eagles used for religious purposes by a member of an Indian tribe when possessed or transported as permitted by 16 U.S.C. 668a."

Approved March 30, 1983.

CHAPTER NO. 302

AN ACT TO PROVIDE THAT FOR PRIVATELY OWNED PUBLIC SWIMMING POOLS NO LIFEGUARD IS REQUIRED IF WARNING IS GIVEN; AMENDING SECTION 50-53-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-53-107, MCA, is amended to read:

"50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required. *(1)* Public swimming pools and public

bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe.

(2) A lifeguard is not required for a privately owned public swimming pool if:

(a) a sign is prominently displayed on the swimming pool premises with the words "No lifeguard is on duty" or words of substantially the same meaning; and

(b) one individual per shift is on the premises, accessible to the pool, and currently certified as competent in:

(i) basic water safety measures by the American red cross; and

(ii) cardiopulmonary resuscitation by either the American red cross or the American heart association."

Approved March 30, 1983.

CHAPTER NO. 303

AN ACT TO REVISE TAXATION EXEMPTIONS FOR CERTAIN COAL PRODUCERS; AMENDING SECTIONS 15-6-208 AND 15-35-103, MCA;, PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-208, MCA, is amended to read:

"15-6-208. Mineral exemptions. (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than *50,000* tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year shall be exempt from property taxation on one-half of the merchantable value."

Section 2. Section 15-35-103, MCA, is amended to read:

"15-35-103. Severance tax — rates imposed — exemptions. (1) A severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 20% of value	5 cents or 3% of value
7,000-8,000	22 cents or	8 cents or

	30% of value	4% of value
8,000-9,000	34 cents or	10 cents or
	30% of value	4% of value
Over 9,000	40 cents or	12 cents or
	30% of value	4% of value

"Value" means the contract sales price.

(2) The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule.

(3) A person is not liable for any severance tax upon *50,000* tons of the coal he produces in a calendar year, *except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.*"

Section 3. **Nonseverability.** It is the intent of the legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid, and the prior law as reflected in sections 15-6-208 and 15-35-103 prior to the passage of this act shall remain in full force and effect.

Section 4. **Effective date — applicability.** This act is effective on passage and approval and applies to coal produced after December 31, 1982.

Approved March 31, 1983.

CHAPTER NO. 304

AN ACT AUTHORIZING THE UNEMPLOYMENT INSURANCE DIVISION TO USE A PORTION OF CONTRIBUTIONS FROM EMPLOYERS FOR CERTAIN ADMINISTRATIVE PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Contributions for certain administrative purposes.** Beginning with the third quarter of 1983, .1% of employer contributions received by the department and .05% of total wages paid by employers not covered by an experience rating may be used by the department for administrative purposes. All such contributions must be deposited in the unemployment insurance administration account provided for in 39-51-406 and used as appropriated by the legislature. Any contributions deposited to the unemployment insurance administration account that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402.

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to section 1.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved March 31, 1983.

CHAPTER NO. 305

AN ACT AMENDING SECTION 85-5-107, MCA, TO REVISE THE REPORTING REQUIREMENTS FOR AND COSTS ASSESSABLE BY A WATER COMMISSIONER.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-5-107, MCA, is amended to read:

"85-5-107. Record of daily distribution of water. Each water commissioner must keep a daily record of the amount of water distributed to each water user and must file a summary of such record with the clerk of the court monthly *or seasonally, at the discretion of the district judge* during his term of service, showing in detail the total amount of water distributed *each day* to each water user during such month *or season* and the amount of cost therefor, based upon the water commissioner's or commissioners' salary per day *and other costs of the water commissioner approved by the district judge,* and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the judge, they may file a joint summary of their record with the clerk of the court, or the chief commissioner, if one has been appointed by the judge, may file a summary in behalf of all of them."

Approved March 31, 1983.

CHAPTER NO. 306

AN ACT REVISING THE LAW RELATING TO SPECIAL LICENSE PLATES FOR MEMBERS OF THE NATIONAL GUARD; AMENDING SECTION 10-1-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-110, MCA, is amended to read:

"10-1-110. License plates for national guardsmen. *(1)* In *lieu of* the regular license plates prescribed by law, there may be issued to each active member of the Montana national guard license plates to be numbered in sets of two with a different number following the letters "NG". Plates shall be furnished by the division of motor vehicles to the *county*

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treasurer and by him issued to the members of the active guard. The adjutant general shall *issue a certificate authorizing each active member of the national guard one set of such plates, and* the member *shall surrender the plates upon* becoming ineligible to use them. Plates so issued shall be placed or mounted on the vehicle and shall be removed upon sale or other disposition of the vehicle. Said distinctive plates shall be renewed every 5 years or when lost, destroyed, or damaged.

(2) Each active member of the national guard who receives special license plates under subsection (1) is liable for payment of all taxes and fees required under Title 61, chapter 3, parts 3 and 5."

Approved March 31, 1983.

CHAPTER NO. 307

AN ACT TO ALLOW THE DEPARTMENT OF ADMINISTRATION TO PROVIDE ASSISTANCE TO POLITICAL SUBDIVISIONS OR NONPROFIT ORGANIZATIONS FOR THE PURPOSE OF ESTABLISHING COMMUNICATION SYSTEMS; AMENDING SECTION 2-17-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-302, MCA, is amended to read:

"2-17-302. Communication systems. (1) The department of administration shall:

(a) provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points.

(b) exercise general supervision over all existing communications systems for all agencies of state government;

(c) plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(d) approve standards and procedures for selection, acquisition, and operation of communication equipment;

(e) insure that all communications equipment is properly maintained. The department is authorized to establish a centralized maintenance program for all state communications equipment and to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered.

(f) provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

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(g) provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions the department may establish;

(h) accept federal funds granted by congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(i) foster the development of new and innovative communications systems and techniques *within the state*, including but not limited to satellite communications, and high-speed, high-density data transfer. To carry out the purposes of this section, the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.

(2) The department may provide assistance to political subdivisions or nonprofit organizations, upon such terms that the department may establish, relative to state and interstate communications systems and techniques.

(3) The department shall adopt adequate rules for the use of any communications equipment and facilities now in use or hereafter made available."

Approved March 31, 1983.

CHAPTER NO. 308

AN ACT REVISING THE LAWS RELATING TO PRIORITY OF AGISTERS' LIENS AND LIENS OF SERVICE OVER PERFECTED SECURITY INTERESTS AND OTHER RECORDED LIENS; AMENDING SECTION 71-3-1202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1202, MCA, is amended to read:

"71-3-1202. Priority. (1) The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the property involved unless within *30* days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lienholder, stating his intention to assert a lien on said property, under the terms of this part, and stating the nature and approximate amount of the work performed or *feed or other services* furnished or intended to be performed or furnished therefor.

(2) Such service may be made either by personal service or by mailing by registered or certified mail a copy of said notice to the secured party or other lienholder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office.

(3) Within *20* days after the date of such mailing or *10* days after such personal service, the secured party or other lienholder or his representative

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shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lienholder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this part."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved March 31, 1983.

CHAPTER NO. 309

AN ACT LIMITING THE AMOUNT A HEALTH SERVICE CORPORATION MAY CHARGE FOR A POLICY CONVERTED FROM A GROUP PLAN; REQUIRING 45 DAYS' NOTICE OF ANY RATE INCREASE BY A HEALTH SERVICE CORPORATION; AMENDING SECTION 33-30-1007, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-30-1007, MCA, is amended to read:

"**33-30-1007. Conversion on termination of eligibility.** (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, shall contain a provision that if the insurance or any portion of it on a person, his dependents, or family members covered under the policy ceases because of termination of his employment or of his membership in the class or classes eligible for coverage under the policy or as a result of an employer discontinuing his business, such person shall, provided he has been insured for a period of 3 months, be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on himself, his dependents, or family members, provided application for the individual policy shall be made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy shall, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particular entity.

(3) The premium on the individual policy shall be at the insurer's then customary rate applicable to the coverage of the individual policy *but may not be greater than 150% of the insurer's highest group rate for a policy with the same benefits as the conversion policy.*"

Section 2. **Notice of rate increases — comment to commissioner.** (1) A health service corporation must inform members covered under individual plans of any rate increase at least 45 days prior to such increase. Each rate increase notice must include:

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(a) a provision notifying the member that he may comment on the rate increase; and

(b) the mailing address of the commissioner.

(2) The premium rate for an individual policy converted from a group plan in accordance with 33-30-1007(3) may not be increased during the first 6 months of coverage of individual policy.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 33, chapter 30, and the provisions of Title 33, chapter 30, apply to section 2.

Approved March 31, 1983.

CHAPTER NO. 310

AN ACT TO DIRECT THE DEPARTMENT OF ADMINISTRATION TO WORK TOWARD THE GOAL OF ESTABLISHING A STANDARD OF EQUAL PAY FOR COMPARABLE WORTH AND TO REQUIRE THE DEPARTMENT TO REPORT TO THE LEGISLATURE THE STATUS OF THE STANDARD UNDER THE STATE CLASSIFICATION PLAN AND PAY SCHEDULES.

WHEREAS, Article II, section 4, of the Montana Constitution prohibits discrimination against any person in the exercise of his or her civil rights on the basis of sex; and

WHEREAS, Montana laws prohibit compensation of women "less than that paid to men for equivalent service"; and

WHEREAS, pay disparities between men and women still exist in Montana in general and in state government in particular because of both overt sex discrimination and subtle biases which, although more difficult to recognize, inherently undervalue the work of women; and

WHEREAS, statistics for state government employees in Montana reveal that, for the 15-month period ending March 31, 1982:

(1) the average female employee earned only 69.4% as much as the average male employee;

(2) females held 90.2% of all clerical positions, 32.5% of all professional positions, 17.8% of all managerial positions, and 1.7% of all skilled craft jobs; and

(3) compared to large private-sector employers in Montana (in 1978), a woman employed by state government is half as likely to be a professional or managerial employee as her private-sector colleague; and

WHEREAS, studies being conducted throughout the states are revealing that jobs dominated by women are accorded less value than comparable jobs dominated by men; and

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WHEREAS, state government in Montana should serve as a model for the equal employment opportunity that is required under the State's Constitution and state and federal statutes and by our basic commitment to human rights and human dignity.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Comparable worth.** The department of administration shall, in its continuous efforts to enhance the current classification plan and pay schedules, work toward the goal of establishing a standard of equal pay for comparable worth. This standard for the classification plan shall be reached by:

(1) eliminating, in the classification of positions, the use of judgments and factors that contain inherent biases based on sex; and

(2) comparing, in the classification of positions, the factors for determining job worth across occupational groups whenever those groups are dominated by males or females.

Section 2. **Status report.** The department of administration shall report to the legislature the status of the study of the comparable worth standard and the extent to which Montana's classification plan and pay schedules adhere to or fall short of the standard of equal pay for comparable worth. The department shall make recommendations to the legislature as to what impediments exist to meeting this standard. The department shall continue to make such reports until the standard is met.

Approved March 31, 1983.

CHAPTER NO. 311

AN ACT REVISING THE PROVISIONS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM ACT PERMITTING A MEMBER TO RECEIVE RETIREMENT BENEFITS FOR AN ABSENCE DUE TO ILLNESS OR INJURY; PERMITTING CERTAIN MEMBERS WHO ARE ELIGIBLE FOR SERVICE RETIREMENT TO APPLY FOR A DISABILITY RETIREMENT; AMENDING SECTIONS 19-3-504 AND 19-3-1002, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-504, MCA, is amended to read:

"19-3-504. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service by reason of injury or illness determined within 1 year after the end of such absence as arising out of and in the course of his employment shall be considered as spent in service for the purpose of qualification for *service* retirement benefits *under Title 19, chapter 3, part 9,* or survivorship allowances *under Title 19, chapter 3, part 12,* but not for the calculation of such benefits unless the member complies with subsections (2) through (4) of this

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section, in which case the absence shall be considered as time spent in service for both the calculation and qualification of benefits.

(2) *(a)* Any member absent because of an employment-related injury which entitles him to workers' compensation payments may contribute to the retirement system, upon his return to service, *an amount* equal to the contributions which would have been made by him to the system on the basis of his compensation at the commencement of his absence *plus interest accruing from 1 year from the date after he returns to covered employment to the date he contributes for his period of absence.*

(b) Whenever a member elects to *contribute under subsection (2)(a)*, the employer shall contribute an amount equal to what its employer contributions would have been had the member not been absent from service. *In addition, the employer may contribute an amount equal to the interest accruing on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). If the employer elects not to pay the interest costs, this amount must be paid by the employee.*

(3) *At some time after returning to covered employment, a* member must file with the board a written notice of his intent to pay the contributions under subsection (2).

(4) Payment of the employee's contributions which are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis not to exceed 24 monthly payments.

(5) A member so absent loses his right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 19-3-703."

Section 2. Section 19-3-1002, MCA, is amended to read:

"19-3-1002. Eligibility for disability retirement. *(1) Except as provided in subsection (2) and 19-3-1004, a* member who is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the workers' compensation division concerning the duty-related accident. If no information is available, the board may request and the division shall provide an investigative report on the disabling accident."

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved March 31, 1983.

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CHAPTER NO. 312

AN ACT AUTHORIZING THE BOARD OF PUBLIC EDUCATION TO ADOPT POLICIES FOR PROGRAMS TO SERVE GIFTED AND TALENTED CHILDREN; AMENDING SECTIONS 20-2-121, 20-7-903, AND 20-7-904, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-2-121, MCA, is amended to read:

"20-2-121. Board of public education — powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification, specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of state equalization aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(10) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904; and

(11) perform any other duty prescribed from time to time by this title or any other act of the legislature."

Section 2. Section 20-7-903, MCA, is amended to read:

"20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding. (1) The *conduct of programs to serve* gifted and talented *children must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education.*

(2) Proposals approved by the superintendent of public instruction *in accordance with policies of the board of public education* must be funded by money appropriated to the superintendent for that purpose.

(3) A school district shall match funds provided by the superintendent for a gifted and talented children's program with equal funds from other sources. "In kind" contributions may not be used to constitute such a match. Funds must be administered by the school district as provided in 20-9-507.

(4) The superintendent of public instruction may deduct reasonable costs of administration from the funds appropriated for the purposes of this part."

Section 3. Section 20-7-904, MCA, is amended to read:

"20-7-904. Review and recommendations of proposals. (1) *The policies of the board of public education must assure that program* proposals submitted by school districts to the superintendent of public instruction contain:

(a) evidence that identification procedures are comprehensive and appropriate;

(b) a program description including stated needs and measurable objectives designed to meet those needs;

(c) evidence that the activities are appropriate and will serve to achieve the program objectives; and

(d) a method to evaluate the effectiveness of the program.

(2) School districts may request assistance from the staff of the superintendent in formulating program proposals.

(3) The superintendent of public instruction *shall supervise and coordinate the programs for gifted and talented children by:*

(a) recommending to the board of public education the adoption of those policies necessary to establish a planned and coordinated program; and

(b) establishing a procedure for review and approval of program proposals."

Section 4. **Effective date.** This act is effective July 1, 1984.

Approved March 31, 1983.

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CHAPTER NO. 313

AN ACT TO PROVIDE THAT THE FISH AND GAME COMMISSION MAY AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO OPEN OR CLOSE SPECIAL SEASONS UPON 12 HOURS' NOTICE; AMENDING SECTION 87-1-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-304, MCA, is amended to read:

"87-1-304. Fixing of seasons and bag and possession limits. (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close, shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and declare areas open to the hunting of deer, antelope, elk, moose, sheep, and goat by bow and arrow permit holders and designate times when only bow and arrows may be used to hunt deer, antelope, elk, moose, sheep, and goat in those areas. It may declare areas open to deer hunting where shotguns only may be used to hunt or kill deer. It may declare areas open to special license holders only and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, animals, or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property or when written complaint of such damage has been filed with the commission by the owner of that property. In determining to whom those licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system shall be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) It may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time, when necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

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(6) It may declare certain fishing waters closed to fishing except by persons under 13 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 13 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Approved March 31, 1983.

CHAPTER NO. 314

AN ACT TO GENERALLY REVISE THE LAW RELATING TO THE REQUIRED RETENTION OF BANK RECORDS; AMENDING SECTION 32-1-491, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-491, MCA, is amended to read:

"32-1-491. Destruction of bank records. *(1)* Banks *are* required to preserve or keep their records *of customer accounts* for *at least 8* years next after January 1 of the year following the time of the making of such records, provided, however, that *records* showing unpaid balances in favor of depositors of any banks shall not be destroyed. No liability shall accrue against any bank destroying any such records (except records the destruction of which is forbidden hereby) after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for bank records other than those records listed in subsection (1)."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1983.

CHAPTER NO. 315

AN ACT CLARIFYING THE PROCEDURES FOR GRANTING CONTINGENCY FINANCING OR EMERGENCY BUDGETS FOR ALLOWABLE COSTS OF SPECIAL EDUCATION; AMENDING SECTION 20-9-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-321, MCA, is amended to read:

"20-9-321. Maximum general fund budget and contingency funds for special education. (1) For the purpose of establishing the maximum-budget-without-a-vote amount for current year special education program for a school district, the superintendent of public instruction will

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determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget will be prepared on forms provided by the superintendent of public instruction and will set out for each program:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of 20-9-315 through 20-9-321.

(2) The total amount of allowable costs approved by the superintendent of public instruction shall be the special education maximum-budget-without-a-vote amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget shall not, under any condition, be less than the maximum-budget-without-a-vote amount for one regular ANB for each special full-time pupil in the school district.

(3) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district maximum-budget-without-a-vote for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year *must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the emergency budget provisions of 20-9-161(5), allowable costs for the given year* may be added to the maximum-budget-without-a-vote amount for special education for the subsequent school year. Such costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.

(4) The sum of the previous year special education expenses as defined in subsection (3) above and the maximum-budget-without-a-vote for current year special education as defined in subsections (1) and (2) shall be the special education budget for accounting purposes.

(5) The maximum-budget-without-a-vote for special education will be added to the maximum-budget-without-a-vote of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total maximum-budget-without-a-vote for the district."

Approved March 31, 1983.

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CHAPTER NO. 316

AN ACT TO INCREASE THE COVERAGE OF CROP DUSTING AND SPRAYING LIENS; AMENDING SECTION 71-3-901, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-901, MCA, is amended to read:

"71-3-901. Who may have lien — amount. Any person, firm, corporation, or partnership which shall under contract, express or implied, perform labor or services or furnish material in crop dusting or spraying grains or crops for the purpose of weed, disease, or insect control for promoting the growth of such grains or crops shall have a lien upon all such grains or crops so crop dusted or sprayed for and on account of the labor or service performed and material furnished, upon complying with the provisions of this part; provided, however, that any such lien shall not exceed the prevailing price charged in the particular locality in which such grain or crops *are* sprayed or dusted."

Approved March 31, 1983.

CHAPTER NO. 317

AN ACT TO CHANGE THE FILING TIME FOR A CROP LIEN FOR SEED OR GRAIN FURNISHED OR FUNDS ADVANCED TO PURCHASE THE SAME FROM 30 DAYS TO 90 DAYS AFTER THE SEED OR GRAIN IS FURNISHED OR THE FUNDS ARE ADVANCED; AMENDING SECTION 71-3-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-703, MCA, is amended to read:

"71-3-703. How to obtain lien. Any person who is entitled to a lien under 71-3-701 shall, within *90* days after the seed or grain is furnished or the funds, means, or moneys advanced therefor, file in the office of the county clerk and recorder of the county in which such seed or grain is to be planted or used a statement in writing verified under oath showing the kind and quantity of the seed or grain furnished, its value, or the amount of the funds or money advanced to pay therefor, the name of the person or persons to whom furnished, and a description of the land and of each tract of land upon which the same is to be or has been planted or sown or used in the production of a crop. Unless the person entitled to such lien shall file such statement within the time aforesaid, he shall be deemed to have waived the right thereto."

Approved March 31, 1983.

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CHAPTER NO. 318

AN ACT AUTHORIZING MUTUAL AID AGREEMENTS AMONG LAW ENFORCEMENT AGENCIES OF THIS AND OTHER STATES AND THE UNITED STATES; SPECIFYING AUTHORITY OF LAW ENFORCEMENT OFFICERS AND AGENCIES; CLARIFYING THE EFFECT OF AGREEMENTS ON LEGAL DUTIES OF LAW ENFORCEMENT AGENCIES; PROVIDING FOR APPROVAL AND FILING OF AGREEMENTS; AUTHORIZING AGENCY COMMITMENT OF FUNDS, PERSONNEL, AND EQUIPMENT FOR PURPOSES OF AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 12] shall be known and may be cited as the "Interstate Law Enforcement Mutual Aid Act".

Section 2. **Purpose.** It is the purpose of [sections 1 through 12] to permit one or more law enforcement agencies of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more law enforcement agencies of any other state or the United States in order to facilitate and coordinate efficient, cooperative enforcement efforts directed at mutual law enforcement problems transcending jurisdictional boundaries and to insure the prompt and effective delivery of law enforcement and emergency services in areas that, due to geographic remoteness, population sparsity, and economic and other factors are in need of an increased law enforcement presence.

Section 3. **Definitions.** When used in [sections 1 through 12], unless the context requires otherwise, the following definitions apply:

(1) "Law enforcement agency" means a public agency lawfully established by statute or executive order that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, or game laws.

(2) "Law enforcement agency of this state" or "law enforcement agency of another (or any other) state" includes, respectively, a law enforcement agency of a political subdivision of this state and a law enforcement agency of a political subdivision of another state.

(3) "Mutual aid agreement" or "agreement" means an agreement between two or more law enforcement agencies, consistent with the purposes of [sections 1 through 12].

(4) "Party law enforcement agency" means a law enforcement agency that is a party to a mutual aid agreement as set forth in [sections 1 through 12].

(5) "Peace officer" has the meaning as the term is defined in 46-1-201.

Section 4. **Authorization to enter agreement — general content — authority of peace officer.** (1) Any one or more law enforcement agencies of this state may enter into a mutual aid agreement with

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any one or more law enforcement agencies of any other state or the United States to provide the law enforcement or emergency services that all of the parties are authorized by law to perform. If required by applicable law, the agreement must be authorized and approved by the governing body of each party to the agreement.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) Subject to [section 8], a mutual aid agreement may grant a peace officer of any party law enforcement agency acting within the territorial jurisdiction of any other party law enforcement agency authority to act as if he were a duly appointed and qualified peace officer of the law enforcement agency he is assisting.

Section 5. **Detailed content of agreement.** The agreement authorized by [section 4] must specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement;

(8) the minimum standards for law enforcement personnel implementing the provisions of the agreement;

(9) the respective liability of each party to the agreement for the actions of law enforcement officers when acting under the provisions of the agreement;

(10) the minimum insurance required of each party to the agreement;

(11) the exact chain of command or delegation of authority to be followed by law enforcement officials acting under the provisions of the agreement;

(12) the precise enforcement authority that the peace officers of each party law enforcement agency may exercise; and

(13) any other necessary and proper matters.

Section 6. **Right of state in actions involving agreements.** In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more law

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enforcement agencies of political subdivisions of this state and one or more law enforcement agencies of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any law enforcement agency whose default, failure, performance, or other conduct caused or contributed to any liability incurred by this state.

Section 7. **Agreement not to relieve agency of duties.** No agreement made under [sections 1 through 12] may relieve any law enforcement agency of this state of any duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

Section 8. **Limitation of powers.** Except for the right granted by [sections 1 through 12] to jointly exercise powers, [sections 1 through 12] do not authorize any law enforcement agency of this state to exercise any power that it is not otherwise authorized to exercise.

Section 9. **Submission of agreement to attorney general.** (1) As a condition precedent to an agreement becoming effective under [sections 1 through 12], the agreement must be submitted to and receive the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under [sections 1 through 12] unless he finds that it is not in proper form, does not meet the requirements set forth in [sections 1 through 12], or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the party law enforcement agencies.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission to him, it is considered approved by him.

Section 10. **Filing of agreement.** Within 20 days after approval by the attorney general, an agreement made pursuant to [sections 1 through 12] must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

Section 11. **Authorization to appropriate funds for purpose of agreement.** Any law enforcement agency of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

Section 12. **Effect of other law.** The procedures and remedies provided in [sections 1 through 11] apply to the exclusion of those remedies

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and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

Section 13. **Effective date.** This act is effective on passage and approval.

Approved March 31, 1983.

CHAPTER NO. 319

AN ACT PROHIBITING, EXCEPT UNDER CERTAIN CIRCUMSTANCES, APPELLATE REVIEW OF ALLEGED ERRORS NOT OBJECTED TO DURING A CRIMINAL TRIAL; AMENDING SECTIONS 46-20-104 AND 46-20-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-20-104, MCA, is amended to read:

"46-20-104. Scope of appeal by defendant. (1) An appeal may be taken by the defendant only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.

(2) Upon appeal from a judgment, the court may review the verdict or decision and any *alleged error* objected to which involves the merits or necessarily affects the judgment. *Failure to make a timely objection during trial constitutes a waiver of the objection except as provided in 46-20-702.*"

Section 2. Section 46-20-702, MCA, is amended to read:

"46-20-702. Types of errors noticed on appeal. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. *No claim alleging an error* affecting jurisdictional or constitutional rights may be noticed *on appeal, if the alleged error was not objected to as provided in 46-20-104, unless the defendant establishes that the error was prejudicial as to his guilt or punishment and that:*

(1) the right asserted in the claim did not exist at the time of the trial and has been determined to be retroactive in its application;

(2) the prosecutor, judge, or a law enforcement agency suppressed evidence from the defendant or his attorney that prevented the claim from being raised and disposed of; or

(3) material and controlling facts upon which the claim is predicated were not known to the defendant or his attorney and could not have been ascertained by the exercise of reasonable diligence."

Approved April 2, 1983.

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CHAPTER NO. 320

AN ACT TO DELETE THE WORD "CREDIT" FROM THE NAME OF DEVELOPMENT CREDIT CORPORATIONS OF MONTANA; TO CHANGE THE LOAN LIMIT RESTRICTIONS FOR SUCH CORPORATIONS; TO LOWER THE INTEREST RATE ON SUCH CORPORATIONS' EVIDENCES OF INDEBTEDNESS; AND TO LOWER THE REQUIRED EARNED SURPLUS OF SUCH CORPORATIONS; AMENDING SECTIONS 32-4-101, 32-4-201, 32-4-302, AND 32-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-4-101, MCA, is amended to read:

"32-4-101. Definitions. As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "corporation"—a Montana development corporation created under this chapter;

(2) "financial institution"—any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;

(3) "member"—any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this chapter, upon its call and in accordance with the provisions of this chapter;

(4) "board of directors"—the board of directors of the corporation created under this chapter;

(5) "loan limit"—for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this chapter."

Section 2. Section 32-4-201, MCA, is amended to read:

"32-4-201. Incorporators — general powers — capital stock — articles of incorporation. Nine or more persons, a majority of whom shall be residents of this state, who desire to create a development corporation under the provisions of this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner:

(1) Such persons shall by articles of incorporation filed in the manner prescribed in Title 35, under their hands and seals, set forth:

(a) the name of the corporation, which shall include the words "Development Corporation of Montana";

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(b) the location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors;

(c) the purposes for which the corporation is founded, which shall include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation; provided that the corporation may not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from the members, nonmember persons, firms, or corporations and state and federal agencies for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided that no loan to the corporation may be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner;

(iv) to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation may not approve any application for a loan unless the person applying for the loan shows that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

(v) to participate with any duly authorized private lending agency and city, state, and federal governmental lending agencies in the making of loans;

(vi) to purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(vii) to acquire the good will, business, rights, real and personal property, and other assets or any part thereof or interest therein of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint-stock company, association, or trust;

(viii) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or

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for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments;

(ix) to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(x) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder thereof exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(xi) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections (1)(c)(vi) through (1)(c)(x) of this section, as security for the payment of any part of the purchase price thereof;

(xii) to cooperate with and avail itself of the facilities of the state planning and economic development divisions of the department of commerce and any similar governmental agencies and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof;

(xiii) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency, whether state, federal, or municipal;

(xiv) to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business, and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 35, so far as consistent with this chapter."

Section 3. Section 32-4-302, MCA, is amended to read:

"32-4-302. Membership — limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by

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the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this chapter. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed 10 times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) 20% of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding amounts validly called for loan but not yet loaned;

(b) the following limit, to be determined on the basis of the *member's* balance sheet at the close of its *1982* fiscal year *and then redetermined periodically with the concurrence of the member*:

(i) 3% of the capital and surplus of commercial banks and trust companies;

(ii) 1% of the total outstanding loans made by a building and loan association;

(iii) 2% of the capital and unassigned surplus of stock insurance companies; and

(iv) such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) The board of directors, on the request of any financial institution applying for membership and with the approval of one-half of the members that are the same type of financial institution as the applicant, may authorize a different loan limit than that set forth in subsection (3)(b).

(5) Subject to subsection (3)(a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

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(6) All loans to the corporation by a member shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of not less than ¼ of 1% in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the *time.*"

Section 4. Section 32-4-304, MCA, is amended to read:

"**32-4-304. Surplus.** Each year the corporation shall set apart as earned surplus not less than 10% of its net earnings for the preceding fiscal year until such surplus shall be equal in value to *50%* of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons."

Section 5. **Code commissioner instruction.** Whenever a reference to a "Montana development credit corporation" is contained in any new material enacted by the 48th legislature, the code commissioner is instructed to delete the word "credit" from the reference for consistency with SB 125.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1983.

CHAPTER NO. 321

AN ACT REVISING THE SUNSET PROVISIONS CONCERNING STATE AGENCIES; ELIMINATING THE 6-YEAR LIMITATION ON REESTABLISHING AGENCIES OR PROGRAMS; ESTABLISHING A PROCEDURE FOR SPECIFYING AGENCIES AND PROGRAMS TO BE REVIEWED; AMENDING SECTIONS 2-8-101, 2-8-102, 2-8-111 THROUGH 2-8-113, 2-8-121, AND 2-8-122, MCA; REPEALING SECTIONS 2-8-103 AND 2-8-104, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Determination of agencies and programs to be reviewed.** (1) Before September 1 of each even-numbered year, the governor may furnish the legislative audit committee with a list of his recommendations for agencies and programs to be terminated and subject to a performance audit during the next biennium pursuant to the provisions of this chapter. The list must be prioritized and must set forth the governor's reasons for recommending each agency or program for review.

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(2) The legislative audit committee shall review the list submitted by the governor, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and compile recommendations of agencies and programs to be terminated and subject to a performance audit. The committee shall submit its recommendations to the next legislature in the form of a bill terminating those designated agencies and programs at the times specified in the bill and requiring a performance audit of each agency and program under the provisions of Title 2, chapter 8, within the time specified and prior to termination.

Section 2. Section 2-8-101, MCA, is amended to read:

"2-8-101. Purpose. (1) The legislature finds state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules. The legislature questions whether conditions causing the establishment of these agencies, programs, and rules have not changed to such an extent as to remove the need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, by establishing a system of periodic evaluation of the need for and the performance of agencies *or programs* preparatory to termination, modification, or reestablishment, to be in a better position to ensure as follows:

(a) The executive department is responsive to the needs of all of the people of the state.

(b) No agency, program, or rule exists which is not responsive to those needs.

(c) No profession, occupation, business, industry, or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(d) The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.

(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function by a periodic review and termination, modification, or reestablishment of such programs and functions."

Section 3. Section 2-8-102, MCA, is amended to read:

"2-8-102. Definitions. As used in this part, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive department of state government.

(2) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of

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a state agency authorized by law to be performed and the conformance of expenditures with legislative intent. Audits conducted shall include an analysis of the operation of the agency with special regard to the duplication of efforts between the audited agency *or program* and other agencies *or programs* and the quality of service being rendered.

(3) "Program" means any legislatively or administratively created function, project, or duty of an agency."

Section 4. Section 2-8-111, MCA, is amended to read:

"2-8-111. Prereview agency responsibilities. An agency *designated for termination or whose program or programs are* designated for termination shall by 22 months preceding the date set for termination:

(1) delineate *the* goals of *the* programs, which goals reflect the state's constitution, statutes, and authoritative judicial, legislative, and executive decisions or pronouncements;

(2) delineate *the* objectives of *the* programs and layout clearly enough to be tested, the logic in the assumptions linking expenditures to outcome anticipated, outcome anticipated to objectives, and objectives to impact on problems addressed in goals;

(3) furnish to the legislative auditor upon request of the auditor the information necessary to conduct a performance audit as required by this chapter."

Section 5. Section 2-8-112, MCA, is amended to read:

"2-8-112. Legislative audit committee review and report — review criteria. (1) The legislative audit committee is responsible for *conducting* a review of each agency *or program* scheduled for termination. The review shall be completed at least 6 months prior to the date set for termination. *If for any reason a review of an agency or program cannot be completed as required by this chapter, the legislative audit committee shall submit a proposed bill for the ensuing legislative session to reestablish the agency or program.*

(2) The review conducted shall include a performance audit of the agency *or program with emphasis on its effect on the public health, safety, and welfare.*

(3) The legislative audit committee shall assist in the implementation of the provisions of this part and shall establish administrative procedures which facilitate the review and evaluation as required in this part.

(4) Upon completion of its review, the legislative audit committee shall make a report of its recommendations for continuation, modification, or termination and submit a proposed bill for the ensuing legislative session. If termination is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes *relating to* the *agency's or program's activities."*

Section 6. Section 2-8-113, MCA, is amended to read:

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"2-8-113. Hearings by standing committee — criteria for termination. (1) Prior to *termination* of an agency *or program*, the appropriate standing committee in each house of the legislature or a joint committee of both houses composed of members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency *or program* involved is attached, the head of the agency involved, and persons who conducted the review.

(2) In the event termination *of an agency or program* is recommended by the legislative audit committee, the agency *involved in the termination* has the burden of demonstrating a public need for *the agency's or program's* continued existence and the extent to which a change in the composition, structure, and operation of the agency *or program* would *improve* public health, safety, or welfare.

(3) In determining whether to reestablish an agency *or program*, the legislature shall consider the performance audit and review conducted by the legislative audit committee, the public testimony responsive to the questions set forth in subsection (2) of 2-8-112, and other matters considered relevant by the committee."

Section 7. Section 2-8-121, MCA, is amended to read:

"2-8-121. Effect of termination. Unless otherwise provided, upon termination, each agency, *program*, or unit shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency *or program* except that no action may be taken which would continue in effect beyond the 1-year windup period. Upon the expiration of the 1 year after termination, each agency *or program* not modified or reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund."

Section 8. Section 2-8-122, MCA, is amended to read:

"2-8-122. Reestablishment. (1) Any agency *or program* scheduled for termination under this part or any subsequent act may be reestablished by the legislature.

(2) No more than one agency *or program* may be continued or reestablished in any bill for an act, and the agency *or program* shall be mentioned in the bill's title."

Section 9. **Repealer.** (1) Section 2-8-103, MCA, is repealed.

(2) Section 2-8-104, MCA, is repealed.

Section 10. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to section 1.

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Section 11. **Effective dates.** (1) Sections 1 through 9, except subsection (1) of section 9, are effective upon passage and approval.

(2) Subsection (1) of section 9 is effective July 1, 1983.

Approved April 2, 1983.

CHAPTER NO. 322

AN ACT TO GENERALLY REVISE THE APPLICABILITY OF THE SECURITIES ACT OF MONTANA; AND TO PROVIDE A FEE FOR THE TRANSFER OF A SALESMAN'S REGISTRATION; AMENDING SECTIONS 30-10-102 THROUGH 30-10-105, 30-10-107, AND 30-10-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-102, MCA, is amended to read:

"30-10-102. Policy. Parts 1 through 3 of this chapter shall be construed to:

(1) protect the investor, persons engaged in securities transactions, and the public interest;

(2) promote uniformity among the states; and

(3) encourage, promote, and facilitate capital investment in Montana."

Section 2. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. *A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. Salesman* does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (9), (10), (11), *or (12)* of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

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(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(a) a bank, savings institution, trust company, or insurance company;

(b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

(c) a broker-dealer;

(d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;

(e) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(f) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(g) such other persons not within the intent of this subsection (5) as the commissioner may by rule or order designate.

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(7) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

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(8) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(9) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(c) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(10) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(11) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(12) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico."

Section 3. Section 30-10-104, MCA, is amended to read:

"30-10-104. Exempt securities. Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be

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received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (9) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner;

(6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection;

(8) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

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(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in 4 of its last 5 fiscal years including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 ½ times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (8)(d), means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(9) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;

(10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies;

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(11) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(12) any security for which the commissioner *determines* by order *that an exemption would better serve the purposes of 30-10-102 than would registration.* The commissioner may charge a fee of $50 for granting the exemption by order.

(13) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing."

Section 4. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions. Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not;

(2) any nonissuer distribution of an outstanding security by a broker-dealer *registered pursuant to 30-10-201* if:

(a) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule;

(b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security;

(3) the commissioner may by order deny or revoke the exemption specified in this subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

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(4) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(5) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(6) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(7) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(8) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) any transaction pursuant to an offer directed by the *offeror* to not more than 10 persons (other than those designated in subsection *(8)* of this section) in this state during any period of 12 consecutive months, whether or not the *offeror* or any of the offerees is then present in this state, if:

(a) the seller reasonably believes that all the buyers are purchasing for investment; and

(b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the *federal* Securities Act of 1933, as amended;

(10) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(11) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

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(12) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(13) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner, in his discretion, does not disallow the offer in writing within 10 days of such filing;

(14) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(15) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets; *or*

(16) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102."

Section 5. Section 30-10-107, MCA, is amended to read:

"**30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this chapter shall be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of parts 1 through 3 of this chapter. No rule or form may be made unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of parts 1 through 3 of this chapter authorizes the commissioner or any of his officers or employees to disclose any such information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) No provision of parts 1 through 3 of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule

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or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders which have ever been entered under parts 1 through 3 of this chapter. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes.

(6) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under parts 1 through 3 of this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body."

Section 6. Section 30-10-209, MCA, is amended to read:

"30-10-209. Fees. The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $200 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than $100 or more than $1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) A registration of securities may be renewed after its termination date upon payment of the additional registration fee and a late renewal fee

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of $50. The late renewal fee may be waived by the commissioner upon a showing of good cause.

(d) For filing an annual statement, a posteffective amendment to a registration of securities, or a name change, the fee shall be $10.

(e) When an application for registration of securities is denied or withdrawn, the commissioner shall retain the fee.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman, the fee shall be $50 for original registration with each employer, $50 for each annual renewal, *and $50 for each transfer.*

(c) When an application for registration as a broker-dealer, salesman, or investment adviser is denied or withdrawn, the commissioner shall retain the fee.

(d) For filing posteffective amendments to a registration of a broker-dealer, salesman, or investment adviser, the fee shall be $10, except that there is no fee for filing an address change of a salesman or a notice of disciplinary action.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption *under 30-10-105(16), the fee shall be established by the commissioner by rule. For a request for any other exemption*, the fee shall be $50."

Approved April 2, 1983.

CHAPTER NO. 323

AN ACT TO EXEMPT THE RIGHT OF ENTRY FROM PROPERTY TAXATION; AMENDING SECTIONS 15-6-131, 15-6-201, AND 15-8-111, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-131, MCA, is amended to read:

"15-6-131. Class one property — description — taxable percentage. (1) Class one property includes the annual net proceeds of all mines and mining claims except coal and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503."

Section 2. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

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(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts;

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes; and

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less; *and*

(l) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals.

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(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 3. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as provided in subsection (5) of this section and in 15-7-111 through 15-7-114.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) The market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to motorcycles, aircraft, and boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in 15-6-134 through 15-6-140. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in classes four through eleven is the percentage of market value established for each class of property in 15-6-134 through 15-6-141.

(5) The assessed value of properties in 15-6-131, 15-6-132, and 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503.

(b) Properties in 15-6-132 under class two are assessed at 100% of the annual gross proceeds.

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(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property in 15-6-131 and classes two and three is the percentage of assessed value established in 15-6-131(2), 15-6-132, and 15-6-133 for each class of property."

Section 4. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1982.

Approved April 2, 1983.

CHAPTER NO. 324

AN ACT DEFINING A HOSPICE FOR LICENSING PURPOSES; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES SETTING STANDARDS FOR LICENSING A HOSPICE; AMENDING SECTION 50-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

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(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(8) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(9) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

(10) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(11) "Federal acts" means federal statutes for the construction of health care facilities.

(12) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(13) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, *hospices*, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(14) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(15) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

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(16) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying, and that includes formal bereavement programs as an essential component.

(17) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(18) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(19) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(20) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(21) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

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(22) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(23) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(24) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(25) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(26) "Offer" means the holding out by a health care facility that it can provide specific health services.

(27) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(28) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(29) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(30) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

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(31) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(32) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(33) "State plan" means the state medical facility plan provided for in part 4."

Section 2. **Department to make rules — standards for skilled care.** (1) The department shall by rule establish standards for the licensure of a hospice. These standards must consider the terminally ill patient and his family as a unit and require service delivery through a medically directed interdisciplinary team of professionals and volunteers acting under a defined hospice administration.

(2) A hospice must meet the standards of care defined by law for any skilled care it provides that normally would be provided by a licensed facility such as a hospital, skilled nursing facility, or home health agency.

Section 3. **Hospitals hospice programs — exemptions from separate licensure.** A hospice program provided by a hospital need not be separately licensed if the department finds that such program meets the standards of [section 2].

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to sections 2 and 3.

Approved April 2, 1983.

CHAPTER NO. 325

AN ACT TO PROVIDE FOR THE TRANSFER OF OWNERSHIP, OPERATION, AND CONTROL OF IMPROVEMENT DISTRICT UTILITY SERVICE FACILITIES TO A REGULATED UTILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transfer of operation, control, and ownership of improvement district facilities to a utility.** Whenever a special improvement district has been created in accordance with the provisions of this part for the purpose of providing the facilities through which a regulated utility is to provide utility services to the district, the commissioners may, upon such terms and conditions as may be agreed to, transfer the operation, control, and ownership of the facilities to the regulated utility for use by the utility to provide utility services.

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 7, chapter 12, part 21, and Title 7, chapter 12, part 41, and the provisions of Title 7, chapter 12, part 21, and Title 7, chapter 12, part 41, apply to section 1.

Approved April 2, 1983.

CHAPTER NO. 326

AN ACT TO ALLOW THE DEPARTMENT OF REVENUE TO IMPUTE A VALUE ON COAL WHENEVER THE OPERATOR OF A MINE SUBJECTS THE COAL TO PROCESSING THAT IMPROVES ITS QUALITY; AMENDING SECTION 15-35-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-107, MCA, is amended to read:

"15-35-107. When value of coal may be imputed — procedure. (1) The department may *or shall at the request of the taxpayer* impute a value to the coal which approximates market value f.o.b. mine in a case where:

(a) the operator of a coal mine is using the produced coal in an energy-conversion or other manufacturing process;

(b) the operator of a coal mine refines the coal by drying, cleaning, or other processing designed to improve the quality of the coal;

(c) a person sells coal under a contract which is not an arm's-length agreement; or

(d) a person neglects or refuses to file a statement and tax return under this chapter.

(2) For purposes of subsection (1)(b), market value f.o.b. mine means the value of the coal subsequent to primary and secondary crushing but prior to drying, cleaning, or other processing.

(3) When imputing value, the department may apply the factors used by the federal government under 26 U.S.C., section 613, or that provision as it may be labeled or amended, in determining gross income from mining or the department may apply any other or additional criteria it considers appropriate. Each subject taxpayer shall upon request by the department furnish a copy of its federal income tax return, with any amendments, filed for the year in which the value of coal is being imputed and copies of the contracts under which it is selling coal at the time. When the department's estimate of market value is contested in any proceeding, the burden of proof is on the contesting party."

Section 2. **Use of imputed value for coal gross proceeds.** Whenever value is imputed under 15-35-107(1)(b), that value shall be used for purposes of reporting the value of the gross yield of coal under 15-23-701.

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Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 15, chapter 23, part 7, and the provisions of Title 15, chapter 23, part 7, apply to section 2.

Approved April 2, 1983.

CHAPTER NO. 327

AN ACT AUTHORIZING THE PUBLIC SERVICE COMMISSION TO ORDER REFUNDS AND CREDITS OF PUBLIC UTILITY CHARGES UNLAWFULLY COLLECTED AND ALLOWING INTEREST ON SUCH REFUNDS; AMENDING SECTIONS 69-3-305 AND 69-3-330, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-305, MCA, is amended to read:

"69-3-305. Deviations from scheduled rates, tolls, and charges. (1) It shall be unlawful for any public utility to:

(a) charge, demand, collect, or receive a greater or less compensation for any *utility* service performed by it within the state or for any service in connection therewith than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force;

(b) demand, collect, or receive any rate, toll, or charge not specified in such schedules; or

(c) grant any rebate, concession, or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named therein shall be the lawful rates, tolls, and charges until the same are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may in its discretion order payment of interest at a reasonable rate on the refunded amount.

(4) A public utility violating the provisions of this section *is* subject to the penalty prescribed in 69-3-206. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

Section 2. Section 69-3-330, MCA, is amended to read:

"69-3-330. Decision by commission. (1) If, upon such hearing and due investigation, the rates, tolls, charges, schedules, or joint rates *are* found to be unjust, unreasonable, or unjustly discriminatory or to be preferential or otherwise in violation of the provisions of this chapter, the commission *may* fix and order substituted therefor such rates, tolls, charges, or schedules as *are* just and reasonable.

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(2) If the commission determines that a rate, toll, or charge has been collected in violation of 69-3-305(1)(b), the commission may order refunds or credits as specified in 69-3-305(3).

(3) If *the commission finds* that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this chapter or that the service is inadequate or any reasonable service cannot be obtained, the commission *may* substitute therefor other regulations, measurements, practices, services, or acts and make such order relating thereto as *is* just and reasonable.

(4) In any decision ordering a change in the rates which may be charged for electricity or natural gas, the commission shall list each expenditure submitted by the utility for allowance as an operating cost which is disallowed by the commission as an element of operating costs. The list of disallowed expenditures shall appear in the written decision of the commission and shall itemize each expenditure by amount, category, and purpose."

Approved April 2, 1983.

CHAPTER NO. 328

AN ACT AMENDING SECTION 85-7-1904, MCA, TO INCREASE FROM $125,000 TO $150,000 THE AMOUNT OF A PURCHASE OR RENTAL TO WHICH AN IRRIGATION DISTRICT BOARD MAY BIND A DISTRICT WITHOUT CONSENT OF THE LANDOWNERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1904, MCA, is amended to read:

"85-7-1904. Acquisition of water and waterworks by board. (1) The board shall have power and authority to:

(a) appropriate water in the name of the district;

(b) acquire by purchase, lease, or contract water and water rights; additional waters and supplies of water; canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation, or other legal means:

(i) lands and rights in lands for rights-of-way, for reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances; and

(ii) such other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district system of irrigation works.

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(2) The board shall have the privilege, if desired, to contract with the owner or owners of such canals, reservoirs, dams, and other works so purchased and in the course of construction for the completion thereof.

(3) No purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of *$150,000*, is final or binding upon the district, and no sum may be paid for such purchase, lease, or contract without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts void."

Approved April 2, 1983.

CHAPTER NO. 329

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CERTIFICATES OF NEED FOR HEALTH CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-301, 50-5-302, 50-5-304 THROUGH 50-5-306, AND 50-5-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND DELAYED EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, *third-party payers who reimburse health care facilities in the area affected by the proposal,* and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

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(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent and applications of a specified category and within a specified region of the state, as established by department rule, that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent for specified categories of new institutional health services and for specified regions of the state may be accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Comparative review" means a joint :eview of two or more certificate of need applications within a given batch which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(14) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, *or remodeling, replacement, or renovation of an existing health care facility.*

(15) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

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(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) "Health care facility" *or "facility"* means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(19) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(20) "Health systems agency" means an entity which is organized and operated in the manner described in 42 U.S.C. 300l-2 and which is capable, as determined by the secretary of the United States department of health and human services, of performing each of the functions described in 42 U.S.C. 300l-2.

(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(23) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(24) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accredidation status to any health care facility that it finds meets its standards and requirements.

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(25) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(26) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services.

(28) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(29) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(30) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(31) "Offer" means the holding out by a health care facility that it can provide specific health services.

(32) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(33) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(34) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(35) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

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(36) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(37) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(38) "State health plan" means the plan prepared by the department pursuant to 42 U.S.C. 300m-2(a)(2)."

Section 2. Section 50-5-301, MCA, is amended to read:

"50-5-301. When certificate of need is required. *(1)* Unless *a person has submitted* an application *for and is the holder of* a certificate of need granted by the department, *he* may *not* initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility, that exceeds the expenditure thresholds established in or pursuant to subsection (5). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort and consulting and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility by 10 beds or 10%, whichever is less, in any 2-year period through:

(i) an increase or decrease in the total number of beds;

(ii) a redistribution of beds among various categories; or

(iii) a relocation of beds from one physical facility or site to another;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of $100,000 or more;

(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) of this section if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person to acquire an existing health care facility if:

(i) the person has failed to submit the notice of intent required by 50-5-302(3); or

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(ii) the department finds within 30 days after it receives the notice of intent required by 50-5-302(3) that the acquisition will result in a change in the services or bed capacity of the facility;

(f) the construction, development, or other establishment of a health care facility which did not previously exist or which is being replaced; or

(g) the expansion of the geographical service area of a home health agency.

(2) For purposes of this section:

(a) "obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1;

(b) a health maintenance organization is to be considered a health care facility except to the extent exempted from certificate of need requirements as prescribed in rules adopted by the department.

(3) A proposed change in a project associated with a capital expenditure under subsection (1)(a) or (1)(b) for which the department has previously issued a certificate of need requires subsequent certificate of need review if the change is proposed within 1 year after the date the activity for which the capital expenditure was granted a certificate of need is undertaken. As used in this subsection, a "change in project" includes but is not limited to any change in the bed capacity of a health care facility as described in subsection (1)(b) and the addition or termination of a health care service.

(4) If a person acquires an existing health care facility without a certificate of need and proposes to change, within 1 year after the acquisition, the services or bed capacity of the health care facility, the proposed change requires a certificate of need if one would have been required originally under subsection (1)(e).

(5) (a) Expenditure thresholds for certificate of need review are established as follows:

(i) For acquisition of equipment, the expenditure threshold is $500,000.

(ii) For construction of health care facilities, the expenditure threshold is $750,000.

(b) The department may by rule establish thresholds higher than those established in subsection (5)(a) if necessary and appropriate to accomplish the objectives of this part."

Section 3. Section 50-5-302, MCA, is amended to read:

"50-5-302. Notice of intent — application and review process. *(1) The department may adopt rules including but not limited to rules for:*

(a) the form and content of notices of intent and applications;

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(b) the scheduling and consolidation of reviews of similar proposals;

(c) the abbreviated review of a proposal that:

(i) does not significantly affect the cost or use of health care;

(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;

(iii) is necessary to comply with licensure or certification standards; or

(iv) has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, providing the legislative findings accompanying such approval give consideration to the criteria of 50-5-304, and subject to the provisions of [section 9];

(d) the format of public informational hearings and reconsideration hearings; and

(e) the establishment of batching periods for certificate of need applications for new beds, establishment of new services, and replacement of health care facilities.

(2) At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall submit to the department and the appropriate health systems agency a notice of his intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. *The letter of intent must be placed in the appropriate batch, if any. After expiration of the challenge period following the batching period in which the letter of intent was submitted or if no batching is required, after receipt of the letter of intent,* the department shall send the *person an application* form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304.

(4) Within 15 calendar days after receipt of the application, the department shall determine whether it *is complete.* If, *after the 15 days,* the application is found incomplete, the department shall request *the necessary* additional information *within 5 working days. Upon receipt of the additional information from the application, the department shall have 15 days to determine if the application is complete. If the department fails to make a determination as to the completeness of the application within the prescribed 15-day period, the application shall be deemed to be complete. If the applicant fails to submit the necessary additional information requested by the department by the deadline as prescribed by department rules for considering such reviews, a new letter of intent and application must be submitted and the application will be dropped from the current batch.*

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(5) After *all applications in the current batch have* been designated complete *or, if an application does not require batching, after it is designated complete,* notification must be sent to the *applicants* and all other affected persons regarding the department's projected *time schedule for* review of the *applications.* The review period for *an* application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant *or, if the application has been batched, by all applicants in the batch. All completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area may be considered in relation to each other.* During the review period a public hearing may be held if requested by *an* affected *person or when considered appropriate by the department.*

(6) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or *deny* the application. The department shall notify the applicant and affected persons of its decision *within 5 working days after expiration of the review period. If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to render a decision."*

Section 4. Section 50-5-304, MCA, is amended to read:

"50-5-304. Review criteria, required findings, and standards. *(1)* The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(a) the relationship of the health services being reviewed to the applicable health systems plan, *state health plan,* and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;

(b) the relationship of services reviewed to the long-range development plan, if any, of the person providing or proposing the services;

(c) the need that the population served or to be served by the services has for the services;

(d) the availability of less costly quality equivalent or more effective alternative methods of providing such services;

(e) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(f) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided *and the consistency of the proposal with joint planning efforts by health care providers in the area;*

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(g) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(h) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(i) the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.

(j) the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

(k) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(l) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project;

(m) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal; and

(n) any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended.

(2) If an application for new long-term care beds will involve new or increased use of medicaid funds and the department of social and rehabilitation services determines that such use would cause the state medicaid budget for long-term care facilities to be exceeded, the department of health and environmental sciences may impose conditions on a certificate of need for new long-term care beds, including limitation on the number of approved beds which may be certified for medicaid patients. Availability of medicaid funding may be the basis for imposing conditions but may not be the sole basis for denial of a certificate of need. The department may adopt rules for the imposition of such conditions, but only if the secretary of the United States department of health and human services has approved an amendment to the state's medicaid

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plan, adopted pursuant to 42 U.S.C. 1396a, allowing for the imposition of such conditions."

Section 5. Section 50-5-305, MCA, is amended to read:

"**50-5-305. Period of validity of approved application.** *(1) Unless an extension is granted pursuant to subsection (2), a* certificate of need shall *expire*:

(a) 1 year after its issuance if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a project not requiring construction;

(b) 1 year from the estimated time for completion as shown in the application if the approved project is not complete; or

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted hereunder, or the terms of the certificate of need.

(2) The holder of an unexpired certificate of need may apply to the department to extend the term of the certificate of need for one additional period not to exceed 6 months. The department may grant such an extension upon the applicant's demonstrating good cause as defined by department rule.

(3) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 90-day period after being granted a certificate of need until completion of the project for which the certificate of need was issued."

Section 6. Section 50-5-306, MCA, is amended to read:

"**50-5-306. Right to hearing and appeal.** (1) *An affected person* may request the department *to hold a public hearing and* to reconsider its decision. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within *20* calendar days after the *initial* decision is announced. The public hearing to reconsider shall be held, if warranted or required, within *20* calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within *30* days after the conclusion of the reconsideration hearing.

(2) An *affected person* may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. *An affected person does not have to request the department to hold a reconsideration hearing prior to filing an administrative appeal to the board.* The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

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(3) The hearing before the board *must be a hearing de novo with respect to the findings and conclusions identified pursuant to subsection (2) and must be conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act.* Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm, *reverse, or modify* the department's decision or remand it for further proceedings.

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7.

(5) The department may by rule prescribe in greater detail the hearing and appellate procedures."

Section 7. Section 50-5-308, MCA, is amended to read:

"50-5-308. Special circumstances. *The department shall issue a certificate of need for a proposed capital expenditure if:*

(1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and

(2) the department has determined that the facility or service for which the capital expenditure is proposed is needed and that the obligation of the capital expenditure is consistent with the state health plan."

Section 8. **Report and recommendations to legislature on medicaid funding.** (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report to the legislature concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections shall identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) In addition to the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

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(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

Section 9. **Exemptions from certificate of need review.** (1) Except as provided in subsection (2), the following are exempt from certificate of need review:

(a) expenditures by a health care facility for nonmedical and nonclinical facilities and services unrelated to the operation of the health care facility if a letter of intent is submitted pursuant to 50-5-302 at least 30 days prior to incurring an obligation for capital expenditures to enable the department to determine whether the expenditures are exempt;

(b) a project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(2) If the secretary of the United States department of health and human services notifies the state that the sanctions provided by section 1521 of the Public Health Service Act and all acts amendatory thereto or any other federal statute for noncompliance with federal certificate of need requirements are to be imposed, the department may by rule require certificate of need review for projects exempted by subsection (1) that are otherwise subject to the provisions of this part. Any rule adopted by the department under this subsection is effective only until the 10th day of the next regular legislative session following the adoption of the rule.

Section 10. **Codification instructions.** (1) Section 8 is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to section 8.

(2) Section 9 is intended to be codified as an integral part of Title 50, chapter 5, part 3, and the provisions of Title 50, chapter 5, apply to section 9.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 13. **Effective dates.** (1) This act is effective on passage and approval, with delayed effective dates.

(2) On July 1, 1987, 50-5-301, 50-5-302, and 50-5-304 through 50-5-308, MCA, and sections 8 through 10 hereof are repealed unless reenacted by the legislature.

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(3) On July 1, 1987, 50-5-101, MCA, is amended by deleting subsections (3), (5), (6), (8), (9), (10), (13), (14), and (27) unless reenacted by the legislature.

(4) On July 1, 1987, 50-5-106, MCA, is amended to read as follows, unless reenacted by the legislature:

"50-5-106. Records and reports required of health care facilities — confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provision of 45-7-401, unless the disclosure was authorized in writing by the patient, his guardian, or his agent. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state."

Approved April 2, 1983.

CHAPTER NO. 330

AN ACT REVISING THE STATUTES GOVERNING THE MANNER IN WHICH TAXES AND ASSESSMENTS ARE MADE AGAINST IRRIGATION DISTRICT LANDS; REMOVING THE $5 MINIMUM FEE FOR LANDS NOT ABLE TO RECEIVE WATER; PROVIDING FOR ASSESSMENTS UNDER CONTRACTS WITH THE STATE; AND PROVIDING FOR ASSESSMENT OF CONSTRUCTION COSTS FOR GRAVITY SYSTEMS; AMENDING SECTIONS 85-7-2103 AND 85-7-2104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-2103, MCA, is amended to read:

"85-7-2103. All irrigable lands chargeable alike. (1) All irrigable lands in each irrigation district, except such lands that are included within the district because of the exchange or substitution of water under the provisions of 85-7-1912, shall pay at the same rate for all purposes for which the lands are charged, except as otherwise provided by law. There may be *an administrative* charge of $5 to $25 against each separately owned tract of land regardless of its size, as provided in 85-7-2104.

(2) Whenever water used for the irrigation of any lands within an irrigation district is obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation shall be apportioned and levied upon the lands lying under the ditch or ditches

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running from that particular elevation, in such manner as may be determined fair and equitable by the board of commissioners after considering the facts in each case. This apportionment shall be made by the board of commissioners and included each year in the assessment provided for by 85-7-2104. The amount of the assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, shall be determined by the board of commissioners in such manner and upon such notice to the persons interested in the district as the board in its rules may provide.

(3) Whenever a contract has been made with the United States, the lands within the district, whether originally included or later annexed to the district, shall pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued thereunder and in compliance with any contracts made by the United States with the owners of the lands and in compliance with the contract between the districts and the United States.

(4) Whenever a contract has been made with the state of Montana, the lands within the district, whether originally included or later annexed to the district, shall pay in accordance with state laws and public notices and rules issued thereunder and in compliance with any contract made by the state with the owners of lands and in compliance with the contract between the district and the state.

(5) Whenever the works necessary for the completed project are constructed progressively over a period of years and whenever a portion of the lands within the district are or can be irrigated 1 year or more before the completion of the entire project, those lands so irrigated or that can be so irrigated through the built portion of the project shall pay for the cost of operating that portion of the project serving them with irrigation water and also shall pay such portion of the interest charges as its irrigable area bears to the irrigable area of the entire project.

(6) Whenever lands have appurtenant thereto a partial water right or partial rights in a system of irrigation other than that of the district, the amounts payable shall be equitably apportioned.

(7) Whenever the owners of a portion of the lands within an irrigation district choose to install a gravity system to irrigate those lands, the cost of constructing the gravity system shall be apportioned among and levied upon the lands irrigated by the gravity system in a manner determined to be equitable by the board. The levy shall be included each year in the assessment charged under 85-7-2104."

Section 2. Section 85-7-2104, MCA, is amended to read:

"85-7-2104. Annual tax levy — apportionment when tracts divided. (1) On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs, and the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of

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the district, including any indebtedness incurred under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906. The board shall levy, against each 40-acre tract or fractional lot, as designated by the United States public survey, or platted lot, if land is subdivided in lots and blocks (or where land shall be owned in less than 40-acre tracts or in less than the platted lot, then against each such tract) of land in the district, that portion of the respective total amounts so to be raised which the total irrigable area of any such tract bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district shall be assessed and required to pay the same amount as every other acre of irrigable land therein, unless otherwise specifically provided. The board of commissioners may make a charge of $5 to $25 against each separately owned tract of land, regardless of its size.

(2) In the event that the ownership of any such 40-acre tract or other subdivision of land in the district shall be divided after a special tax or assessment against the same has been levied, each or either of the owners of such tract or subdivisions shall be entitled to have such special tax or assessment equitably apportioned to and against said divisions of such tract or subdivisions, so that each owner shall be enabled to pay such special tax or assessment against his portion of such tract or subdivision and have the same discharged from the lien thereof. In no event shall the charge against any separately owned tract of land be less than $5."

Approved April 2, 1983.

CHAPTER NO. 331

AN ACT PROVIDING FOR THE QUALIFICATION OF PUBLIC SERVICE RETIREMENT CREDITS AMONG THE PUBLIC EMPLOYEES', HIGHWAY PATROLMEN'S, SHERIFFS', GAME WARDENS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS FOR PUBLIC SERVICE PERFORMED FOR THE STATE AND THE POLITICAL SUBDIVISIONS OF THE STATE; AMENDING SECTIONS 19-3-509, 19-6-305, 19-7-309, 19-8-306, AND 19-9-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-509, MCA, is amended to read:

"19-3-509. Qualification of service from other Montana public retirement systems. (1) *(a)* A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the highway patrolmen's, sheriffs', game wardens', *firefighters' unified,* or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the public employees' retirement

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system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection *(1)(b)*. This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)*(a)*, the administrator shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-3-304(2) upon contribution by the employee of the actuarial cost of granting this service in the public employees' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 2. Section 19-6-305, MCA, is amended to read:

"19-6-305. Qualification of service from other Montana public retirement systems. (1) *(a)* A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', sheriffs', game wardens', *firefighters' unified,* or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the highway patrolmen's retirement system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection *(1)(b)*. This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)*(a)*, the administrator shall transfer from the member's former retirement system to the highway patrolmen's retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee

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contribution rate in the highway patrolmen's retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-6-201 upon contribution by the employee of the actuarial cost of granting this service in the highway patrolmen's retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 3. Section 19-7-309, MCA, is amended to read:

"19-7-309. Qualification of service from other Montana public retirement systems. (1) *(a)* A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, *firefighters' unified,* game wardens', or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the sheriffs' retirement system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection *(1)(b)*. This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)*(a)*, the administrator shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-7-201(2) upon contribution by the employee of the actuarial cost of granting this service in the sheriffs' retirement

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system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 4. Section 19-8-306, MCA, is amended to read:

"19-8-306. Qualification of service from other Montana public retirement systems. (1) *(a)* A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, *firefighters' unified,* sheriffs', or municipal police officers' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the game wardens' retirement system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection *(1)(b)*. This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)*(a)*, the administrator shall transfer from the member's former retirement system to the game wardens' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-8-201 upon contribution by the employee of the actuarial cost of granting this service in the game wardens' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 5. Section 19-9-405, MCA, is amended to read:

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"19-9-405. Qualification of service from other Montana public retirement systems. (1) *(a)* A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, *firefighters' unified*, sheriffs', or game wardens' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the municipal police officers' retirement system as determined by the board based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection *(1)(b)*. This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)*(a)*, the administrator shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-9-201 upon contribution by the employee of the actuarial cost of granting this service in the municipal police officers' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 6. **Qualification of service from other Montana public retirement systems.** (1) (a) A member may, at any time before his retirement, make a written election with the board to qualify all or any portion of his creditable service in the public employees', highway patrolmen's, sheriffs', municipal police officers', or game wardens' retirement system for which he has received a refund of his membership contributions. To qualify this service, he must contribute to the retirement fund the actuarial cost of granting the service in the firefighters' unified retirement system, as determined by the board, based on his compensation earned as a member of the former system and the normal contribution rate according to the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

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(b) Upon receiving the member's payment under subsection (1)(a), the administrator shall transfer from the member's former retirement system to the firefighters' unified retirement system an amount equal to the employer contributions made during the member's service, but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before his retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by his public employer. The board may grant service credit subject to the provisions of 19-13-202 upon contribution by the employee of the actuarial cost of granting this service in the firefighters' unified retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the normal contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19.

Section 7. **Codification instruction.** Section 6 is intended to be codified as an integral part of Title 19, chapter 13, part 4, and the provisions of Title 19, chapter 13, apply to section 6.

Section 8. **Effective date.** This act is effective July 1, 1983.

Approved April 2, 1983.

CHAPTER NO. 332

AN ACT CLARIFYING THE COST-OF-LIVING INCREASE FOR CHIEF PROBATION OFFICERS AND PROVIDING AN ANNUAL LONGEVITY ALLOWANCE FOR ALL PROBATION OFFICERS; AMENDING SECTIONS 41-5-704 AND 41-5-705, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-704, MCA, is amended to read:

"41-5-704. Salary and expenses. (1) A chief probation officer shall receive for his services a salary specified by the court depending on the formal training and experience of each respective officer, but such salary may be no lower than $17,000 a year and no higher than $22,000 a year. *In addition to such salary, the* court shall, on or before July 1 of each year, adjust and fix the salary of the chief probation officer for a

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cost-of-living increase by adding to his annual salary on July 1 *of that year* an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1 *of* each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one county whereby such county shall pay the entire salary.

(2) In addition to the compensation provided in subsection (1), each chief probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) For all authorized travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the *chief* probation officer shall, in addition to his office salary, be reimbursed as provided in 2-18-501 through 2-18-503."

Section 2. Section 41-5-705, MCA, is amended to read:

"41-5-705. Deputy probation officers — salary. *(1)* The judge having jurisdiction of juvenile matters may also appoint such additional persons, giving preference to persons having the qualifications suggested for appointment as the chief probation officer, to serve as deputy probation officers as the judge deems necessary, their salaries to be fixed by the judge. Such salaries shall not exceed 90% or be less than 60% of the salary of the chief probation officer *excluding longevity payments provided in 41-5-704.*

(2) In addition to such salary, each deputy probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) If a deputy probation officer is promoted to chief probation officer, his salary may not be decreased by the appointment. He shall retain all longevity allowances earned during his service as a deputy."

Section 3. **No retroactive application.** This act does not apply retroactively, and no person is entitled to receive under this act a longevity allowance of more than 1% in any year.

Section 4. **Effective date.** This act is effective July 1, 1983.

Approved April 2, 1983.

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CHAPTER NO. 333

AN ACT REVISING THE AERIAL HUNTING LAWS; INCLUDING A PROHIBITION ON HARASSMENT OF LIVESTOCK; PROVIDING FOR INCREASED PENALTIES FOR ILLEGAL HUNTING OF WILD ANIMALS; AMENDING SECTIONS 81-7-501, 81-7-503, 81-7-505, AND 81-7-511, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-7-501, MCA, is amended to read:

"81-7-501. Aerial hunting prohibited — exceptions. (1) Except as provided in 81-7-505, no person except an employee of the state, its subdivisions, or the federal government, acting within the scope of his employment may engage in the aerial hunting of wild animals as defined in 81-7-101 without first obtaining a permit from the department of livestock. *The permit must specify the species of wild animals to be hunted and the geographic areas over which aerial hunting may take place.*

(2) No person issued a permit as required by this section may engage in aerial hunting of wild animals in violation of the terms of his permit, the rules promulgated by the board of livestock, or the terms of this part."

Section 2. Section 81-7-503, MCA, is amended to read:

"81-7-503. Residency requirement. No person not having residence and domicile in Montana may be issued a permit provided for in 81-7-501 except when authorized by the board of livestock. *Permits issued to nonresidents may be used only:*

(1) in Montana counties adjacent to the state line that the department of livestock has determined are inadequately serviced by resident permittees; or

(2) on real property in Montana owned by the nonresident permittee."

Section 3. Section 81-7-505, MCA, is amended to read:

"81-7-505. Resident landowners authorized to aerially hunt over their own lands without permit — conditions. Any landowner having residence and domicile in Montana may engage in the aerial hunting of wild animals, as defined in 81-7-101, over his own land without a permit, provided he annually notifies the department in writing that he will be engaged in aerial hunting and gives an adequate description of the location of the land over which he will *aerially* hunt. Such hunting must be in accordance with all rules of the department of livestock."

Section 4. Section 81-7-511, MCA, is amended to read:

"81-7-511. Penalty — revocation of permit. Any person *convicted of violating a provision of this part* is punishable by a fine of not less than *$500* or more than $1,000. *In addition, the permit, if any, of*

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such person must be revoked for such period as the court may determine."

Section 5. **Prohibition against harassing livestock.** While engaged in flying an aircraft, no person, whether or not lawfully authorized to aerially hunt, may knowingly harass, injure, or attempt to injure any livestock except with the express permission of the owner of that livestock.

Section 6. **Codification instruction.** Section 5 is intended to be codified as an integral part of Title 81, chapter 7, part 5, and the provisions of Title 81, chapter 7, part 5, apply to section 5.

Approved April 2, 1983.

CHAPTER NO. 334

AN ACT TO AMEND THE COMPLAINT AND INITIAL INVESTIGATION PROVISIONS OF THE LAWS RELATING TO MISCONDUCT BY JUDICIAL OFFICERS; PROVIDING FOR NOTICE; AMENDING SECTION 3-1-1106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-1106, MCA, is amended to read:

"**3-1-1106. Investigation of judicial officers — complaint — hearing — recommendations.** (1) *(a)* The commission, *upon the filing of a written complaint by* any citizen of the state, may initiate an investigation of any judicial officer in the state *to determine if there are grounds for conducting additional proceedings before the commission. If the commission's investigation indicates that additional proceedings before the commission may be justified, the commission shall require the citizen who filed the original written complaint to sign a verified written complaint before conducting such additional proceedings.*

(b) The commission shall give the judicial officer written notice of the citizen's complaint and of the initiation of an investigation. Notice must also be given if a verified written complaint is filed and must include the charges made, the grounds for the charges, and a statement that the judicial officer may file an answer. The notice must be signed by the commission.

(2) The commission, after such investigation as it considers necessary and upon a finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal, or retirement of a judicial officer;

(b) confidentially advise the judicial officer and the supreme court, in writing, that the complaint will be dismissed if the judicial officer files with the commission a letter stating that he will take corrective action satisfactory to the commission; or

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(c) request the supreme court to appoint one or more special masters who are judges of courts of record to hear and take evidence and to report to the commission.

(3) If after hearing or after considering the record and report of the masters the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal, or retirement of the judicial officer."

Approved April 2, 1983.

CHAPTER NO. 335

AN ACT TO GENERALLY REVISE AND CLARIFY THE LICENSING LAWS FOR CERTIFIED PUBLIC ACCOUNTANTS AND LICENSED PUBLIC ACCOUNTANTS; TO BROADEN THE BOARD OF ACCOUNTANTS MANDATORY RULEMAKING AUTHORITY; TO ALLOW THE BOARD TO REQUIRE ACCOUNTING EXPERIENCE AS A PREREQUISITE TO RECEIVING A PERMIT; GRANTING THE BOARD AUTHORITY TO ASSESS INVESTIGATIVE COSTS; PROVIDING FOR EXCEPTIONS TO PRIVILEGED COMMUNICATIONS; AND PROVIDING A PENALTY; AMENDING SECTIONS 37-50-102, 37-50-201, 37-50-203, 37-50-301 THROUGH 37-50-303, 37-50-305, 37-50-308, 37-50-311, 37-50-312, 37-50-314, 37-50-316, 37-50-321, 37-50-322, 37-50-333 THROUGH 37-50-335, 37-50-342, AND 37-50-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-50-102, MCA, is amended to read:

"37-50-102. Exemptions. Nothing contained in this chapter shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a *permit* to practice under 37-50-314 or a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter or a foreign accountant registered under 37-50-313 provided that such employee or assistant shall not issue any accounting or financial statement over his name."

Section 2. Section 37-50-201, MCA, is amended to read:

"37-50-201. Organization — general rulemaking power — quorum — seal — records. (1) The board shall elect annually a chairman *and a* secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

(3) A quorum for the transaction of business consists of three members of the board.

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(4) The board shall have a seal which shall be judicially noticed.

(5) The department shall keep records of the board's proceeding. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records."

Section 3. Section 37-50-203, MCA, is amended to read:

"37-50-203. Rules of the board. (1) The board may adopt such rules consistent with the purposes of this chapter as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, *as provided in 37-50-305,* for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accounting. In issuing rules and individual orders regarding continuing education, the board, in its discretion:

(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) may prescribe the content, duration, and organization of courses; and

(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accounting that may result from differences in such requirements in other states;

(e) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any such corporation failing to comply with such standards;

(f) internal rules considered necessary to initiate and conduct investigations and protect the confidences of the client of any certified public accountant or licensed public accountant subjected to board disciplinary proceedings;

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(g) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial annual permit; and

(h) rules to enforce the provisions of this chapter, the purpose of which rules shall be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession."

Section 4. Section 37-50-301, MCA, is amended to read:

"**37-50-301. Illegal use of title.** (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person *holds a current* certificate as a certified public accountant *under this chapter.* However, a foreign accountant who has registered under the provisions of 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person *holds a current license* as a licensed public accountant under this chapter.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant *who has registered under 37-50-313* may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

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(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current *permit* issued under 37-50-314 and all of his offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334. However, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner."

Section 5. Section 37-50-302, MCA, is amended to read:

"37-50-302. Certified public accountants — certification — qualifications and requirements. *The board shall grant an initial certificate* as a certified public accountant to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public accountants' examination; and

(3) meets the requirements of education set forth in this chapter and in board rules."

Section 6. Section 37-50-303, MCA, is amended to read:

"37-50-303. Public accountants — licensure — qualifications and requirements. *The board shall grant an initial license* as a *licensed* public accountant to any person who:

(1) is of good moral character;

(2) meets the requirements of education set forth in this chapter *and board rules*; and

(3) complies with the qualifications and requirements in any one of the subsections of 37-50-304."

Section 7. Section 37-50-305, MCA, is amended to read:

"**37-50-305. Education requirements.** A candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(1) with a concentration in accounting; or

(2) with a concentration other than accounting if supplemented by *experience or by* related courses in other areas of business administration and the board determines that an equivalent education has been achieved."

Section 8. Section 37-50-308, MCA, is amended to read:

"**37-50-308. Examination.** Except as provided in 37-1-101(4), the department shall *administer* a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the *board* is final in each case. The *board* may use the examination and grading services of the American institute of certified public accountants. The examination must be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination."

Section 9. Section 37-50-311, MCA, is amended to read:

"**37-50-311. Certified public accountants — waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees.** The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible therefor who is the holder of a certificate, *license, or permit* as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a certified public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued."

Section 10. Section 37-50-312, MCA, is amended to read:

"**37-50-312. Public accountants — waiver of examination for holders of out-of-state license.** The board in its discretion may waive the examination and register as a *licensed* public accountant any person otherwise eligible therefor who is the holder of a license as a *licensed* public accountant, then in full force and effect, issued under the laws of any

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state or is the holder of a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued."

Section 11. Section 37-50-314, MCA, is amended to read:

"37-50-314. Annual permit required — display. (1) *No person may engage in the practice of public accounting in this state unless he holds a current annual permit issued by the department. An annual permit* to engage in the practice of public accounting in this state shall be issued by the department to *a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.*

(2) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal *of a permit* by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.

(3) The board may in its discretion waive the requirement stated in subsection *(2)* if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.

(4) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accounting and for an applicant who cannot fulfill the requirement due to individual hardship.

(5) Subject to subsections *(3)* and *(4)*, the board may revoke, suspend, or refuse to renew the *permit* of an applicant who fails to furnish evidence of having met the continuing education requirements established by the board.

(6) The current annual permit to engage in the practice of public accounting must be prominently displayed for public inspection."

Section 12. Section 37-50-316, MCA, is amended to read:

"37-50-316. Other license fees prohibited. No *certificate, permit, or* license fees shall be imposed as a condition upon the practice of public accountancy other than those provided for in this chapter."

Section 13. **Certificate, license, and permit expiration — renewal fees.** (1) Certificates, licenses, and permits issued by the board expire on December 31 of each year.

(2) Certificates and licenses must be renewed by the department upon payment of the annual renewal fee prescribed by the board.

(3) Permits must be renewed by the department upon payment of the annual renewal fee and upon compliance with the continuing education requirements prescribed by the board.

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Section 14. Section 37-50-321, MCA, is amended to read:

"37-50-321. Revocation and suspension of certificate, license, or permit or refusal to renew permit — recovery of costs. *(1)* After notice and hearing as provided in 37-50-341, the board may revoke or may suspend any certificate issued under 37-50-302 or any license granted under 37-50-303 or may revoke, suspend, or refuse to renew any *permit* issued under 37-50-314 or may censure the holder of any such license for any one or any combination of the following causes:

(a) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining a license to practice public accounting under this chapter;

(b) dishonesty, fraud, or gross negligence in the practice of public accounting;

(c) violation of any provisions of *this chapter or rules of the board*;

(d) conviction of a felony under the laws of any state or of the United States;

(e) conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other state;

(g) suspension or revocation of the right to practice before any state or federal agency;

(h) failure to pay the renewal fees prescribed by the board.

(2) The board may, following a final determination resulting in any disciplinary action taken by the board under subsection (1), recover from the disciplined party all reasonable costs of any proceeding incurred for the purposes of that disciplinary action."

Section 15. Section 37-50-322, MCA, is amended to read:

"37-50-322. Reinstatement of certificate, license, or permit to practice. On application in writing and after hearing pursuant to notice, the board may authorize the department to:

(1) issue a new certificate, *license, or permit;*

(2) reinstate a suspended or revoked certificate, license, or permit; or

(3) modify the terms of suspension of a certificate, license, or permit."

Section 16. Section 37-50-333, MCA, is amended to read:

"37-50-333. Partnership composed of public accountants — registration. (1) A partnership engaged in this state in the practice of public accounting must register with the department as a partnership of licensed public accountants provided it meets the following requirements:

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(a) At least one general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a *permit* issued under 37-50-314 which is in effect.

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a *permit* issued under 37-50-314 which is in effect.

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a *permit* issued under 37-50-314 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a *permit* to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered."

Section 17. Section 37-50-334, MCA, is amended to read:

"37-50-334. Corporation composed of public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a *permit* issued under 37-50-314 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or a licensed public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants or public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant or a licensed public accountant of this state in good standing and must hold a *permit* issued under 37-50-314 which is in effect.

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement

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binding the corporation or the qualified shareholders to purchase any shares offered for sale by or not under the ownership or effective control of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a *permit* to practice in this state as a certified public accountant or licensed public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered."

Section 18. Section 37-50-335, MCA, is amended to read:

"37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under 37-50-313 shall be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must *have* annually *received a permit* under 37-50-314."

Section 19. Section 37-50-342, MCA, is amended to read:

"37-50-342. Violation. Any person who violates any provision of *this chapter or the rules of the board is* guilty of a misdemeanor *and upon conviction shall be punished by a fine of not more than $500, by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.*"

Section 20. Section 37-50-402, MCA, is amended to read:

"37-50-402. Privileged communications. Except by permission of the client or person or firm or corporation engaging him or the heirs, successors, or personal representatives of such client or person or firm or corporation and except for the expression of opinions on financial statements, no certified public accountant, licensed public accountant, or employee thereof shall be required to nor shall he voluntarily disclose or divulge information of which he may have become possessed relative to and in connection with any professional services as a public accountant. The information derived from or as a result of such professional services shall be deemed confidential and privileged. The provisions of this section shall not apply to the testimony *or documents* of a public accountant *furnished* pursuant to *a* subpoena in a court of competent jurisdiction *or a board proceeding.*"

Section 21. **Codification instruction.** Section 13 is intended to be codified as an integral part of Title 37, chapter 50, and the provisions of Title 37, chapter 50, apply to section 13.

Approved April 2, 1983.

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CHAPTER NO. 336

AN ACT TO ESTABLISH THE STATE LICENSE FEES FOR FOOD ESTABLISHMENTS, HOTELS, MOTELS, AND ROOMING HOUSES, TOURIST CAMPGROUNDS, AND TRAILER COURTS; PROVIDING FOR A LOCAL BOARD INSPECTION FUND ACCOUNT WITHIN THE EARMARKED REVENUE FUND; AMENDING SECTIONS 50-50-205, 50-50-305, 50-51-204, 50-51-303, 50-52-202, AND 50-52-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-50-205, MCA, is amended to read:

"**50-50-205. License fee.** For each license issued, the department shall collect a fee of *$30.* It shall deposit *85% of the fees collected in the earmarked revenue fund to the credit of the local board inspection fund account created by [section 4] and the balance of the fees* in the state general fund."

Section 2. Section 50-51-204, MCA, is amended to read:

"**50-51-204. License fee.** There shall be paid to the department with each application for such license or for renewal of such license an annual license fee of *$30. The department shall deposit 85% of the fees collected in the earmarked revenue fund to the credit of the local board inspection fund account created by [section 4] and the balance of the fees in* the general fund."

Section 3. Section 50-52-202, MCA, is amended to read:

"**50-52-202. License fee.** (1) Each application shall be accompanied by a fee of *$30.*

(2) *The* department shall *deposit 85% of the fees collected in the earmarked revenue fund to the credit of the local board inspection fund account created by [section 4] and the balance of the fees* in the state general fund."

Section 4. **Local board inspection fund established.** There is within the earmarked revenue fund a local board inspection fund account.

Section 5. Section 50-50-305, MCA, is amended to read:

"**50-50-305. Department to pay local board for inspections.** (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from *the local board inspection* fund *account created by [section 4]* which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

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(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114."

Section 6. Section 50-51-303, MCA, is amended to read:

"50-51-303. Department to pay local board for inspections. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from *the local board inspection* fund *created by [section 4]* which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114."

Section 7. Section 50-52-302, MCA, is amended to read:

"50-52-302. Department to pay local board for inspection. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from *the local board inspection* fund *created by [section 4]* which is for the purpose of inspecting establishments licensed under this chapter; provided, however, that there is a functioning local board of health and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(2) The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under 50-2-108 through 50-2-114."

Section 8. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 50, chapter 2.

Approved April 2, 1983.

CHAPTER NO. 337

AN ACT FOR THE DESIGNATION OF AREA AGENCIES FOR SENIOR CITIZEN SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Designation of area agencies.** (1) The department of social and rehabilitation services may designate as an area agency in a geographical area an entity that demonstrates its ability to:

(a) develop and administer an area plan for a comprehensive and coordinated system of services; and

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(b) serve as the advocate and focal point for older persons in the planning and service area.

(2) Such an entity may be but is not limited to:

(a) an established office on aging that operates within the geographical area;

(b) an office or agency of a unit of general purpose local government, except a county welfare office or department;

(c) any combination of such offices or units of general purpose local governments; or

(d) any other public or private nonprofit agency, except a regional or local agency of the state.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, chapter 5, part 1, and the provisions of Title 53, chapter 5, part 1, apply to section 1.

Approved April 2, 1983.

CHAPTER NO. 338

AN ACT REQUIRING WHOLESALERS, MANUFACTURERS, AND DISTRIBUTORS OF FARM IMPLEMENTS, INDUSTRIAL AND CONSTRUCTION EQUIPMENT, AND VEHICLES TO REPURCHASE SUCH ITEMS FROM RETAIL DEALERS UPON CANCELLATION OF DEALERSHIP CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Current net price" means the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts; and

(c) automobiles, trucks, and repair parts sold by an automobile or truck dealer as defined in 61-1-314.

(3) "Net cost" means the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer.

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(4) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

Section 2. **Repurchase of inventory items upon cancellation of dealership contract.** (1) If a retailer enters into a written dealership contract evidenced by franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement and either the wholesaler, manufacturer, distributor, or retailer cancels the contract, such wholesaler, manufacturer, or distributor shall, at the retailer's request, pay to the retailer, or credit to the retailer's account if the retailer has outstanding any sums owing the wholesaler, manufacturer, or distributor, an amount equal to:

(a) 100% of the net cost of all new, unused, undamaged, and complete inventory items, except repair parts, held by the dealer at the time of cancellation; and

(b) 85% of the current net price of each repair part carried on the most recent price list or catalog provided by the manufacturer or distributor and held by the dealer at the time of cancellation.

(2) Payment or allowance of credit to the retailer's account of the sum required in subsection (1) must be made upon return of the inventory items to the wholesaler, manufacturer, or distributor. Title to such inventory items passes to the wholesaler, manufacturer, or distributor upon making such payment.

Section 3. **Excepted inventory.** The following inventory is not subject to the repurchase requirements of [section 2]:

(1) any repair part that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, or wet-charge batteries;

(2) any repair part that is in a broken or damaged package;

(3) any single repair part that is priced as a set of two or more items;

(4) any repair part that because of its condition is not resaleable as a new part without repackaging or reconditioning;

(5) any inventory for which the retailer is unable to furnish evidence satisfactory to the wholesaler, manufacturer, or distributor of title, free and clear of all claims, liens, and encumbrances;

(6) any inventory the retailer desires to keep, if he has a contractual right to do so;

(7) any inventory item other than a repair part that is not in essentially new, unused, undamaged, and complete condition;

(8) any repair part that is not in new, unused, or undamaged condition;

(9) any inventory item, other than a repair part, that has been stocked for 36 months or more prior to notice of termination of the contract;

(10) any inventory that was ordered by the retailer after the date of notification of termination of the contract; and

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(11) any inventory that was acquired from any source other than the wholesaler, manufacturer, or distributor.

Section 4. **Repurchase of inventory of deceased retailer.** If the retailer or majority stockholder in a corporation operating as a retailer entitled to payment under [this act] dies, the wholesaler, manufacturer, or distributor shall, unless the heirs or devisees of the deceased agree to continue to operate the dealership, repurchase the inventory from the heirs or devisees in the manner prescribed in [section 2].

Section 5. **Rights not affected.** (1) [This act] does not affect any contractual right of a wholesaler, manufacturer, or distributor to charge back to the retailer's account any amount previously credited or paid as a discount incident to the retailer's purchase of the goods.

(2) [This act] does not affect any security interest that any financial institution, person, wholesaler, manufacturer, or distributor may have in the inventory of the retailer.

Section 6. **Civil liability.** If any wholesaler, manufacturer, or distributor fails or refuses to repurchase any inventory as required by [section 2], the wholesaler, manufacturer, or distributor is liable in a civil action for 100% of the current net price of the inventory, plus any freight charges paid by the retailer, the retailer's attorney fees, and court costs.

Section 7. **Remedy as supplemental.** The provisions of [this act] are supplemental to any agreement between the retailer and wholesaler, manufacturer, or distributor governing the inventory. The retailer may elect to pursue either his contract remedies or the remedy provided in [section 2]. An election to pursue his contract remedies does not bar the retailer's right to the remedy provided in [section 2] as to any inventory not covered by contract.

Section 8. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1983.

CHAPTER NO. 339

AN ACT PROVIDING THAT THE FEE CHARGED BY AN EMPLOYMENT AGENCY IS TO BE BASED ON THE FIRST FULL MONTH'S GROSS INCOME; AMENDING SECTION 39-5-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-5-303, MCA, is amended to read:

"39-5-303. Regulation of fees — disapproval of contract. (1) The fee charged by any employment agency for its services *will* be a percentage of the first *full month's gross income, of any person placed in*

employment, *as provided for in the agency's fee schedule.* The percentage charged must be determined by the agency and is not subject to disapproval by the director.

(2) No applicant may be required to pay more than one fee per placement.

(3) No employment agency may impose a fee in excess of that agreed to in writing.

(4) A fee schedule must be printed on all contracts, and a copy of the contract containing the fee schedule must be given to each applicant prior to any discussion of available employment.

(5) Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract. The director shall disapprove any proposed contract which either tends to be or is vague, deceitful, or misrepresentative."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 2, 1983.

CHAPTER NO. 340

AN ACT TO CLARIFY THE LAW RELATING TO JUNKYARDS ALONG ROADS BY AMENDING THE PROVISIONS RELATING TO MOTOR VEHICLE GRAVEYARDS, MOTOR VEHICLE WRECKING FACILITIES, GARBAGE DUMPS, AND SANITARY LANDFILLS TO CONFORM TO THE APPLICABLE PROVISIONS OF TITLE 75, CHAPTER 10, MCA, AND BY CLARIFYING THE PROVISION ON ADDITIONAL SCREENING; AMENDING SECTIONS 75-15-203, 75-15-214, 75-15-222, AND 75-15-223, MCA; REPEALING SECTIONS 75-15-212 AND 75-15-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-15-203, MCA, is amended to read:

"75-15-203. Definitions. As used in this part only, the following definitions apply:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state as officially designated or as may hereafter be so designated by the state highway commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways".

(2) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, or waste; iron, steel, and other old or scrap ferrous or nonferrous material.

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(3) "Junkyard" means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, *excluding a motor vehicle graveyard or motor vehicle wrecking facility which is regulated under Title 75, chapter 10, part 5, and excluding a garbage dump or sanitary landfill which is regulated under Title 75, chapter 10, part 2.*

(4) "Primary system" means that portion of connected main highways as officially designated or as may hereafter be so designated by the commission and approved by the secretary of transportation pursuant to the provisions of Title 23, United States Code, "Highways"."

Section 2. Section 75-15-214, MCA, is amended to read:

"75-15-214. Highways to issue license for junkyards. (1) The department of highways may issue a license for a junkyard.

(2) *The* department of highways *may acquire* an interest in land for screening purposes or *may pay* for screening installation and materials as authorized by this part."

Section 3. Section 75-15-222, MCA, is amended to read:

"75-15-222. Rules governing screening. *(1)* The department of highways may adopt rules governing the materials to be used in and the location, planting, construction, and maintenance of screening or fencing required by this part.

(2) The department of highways may determine that in the best interests of the state, screening *in addition to that required by rules of the department of highways as of July 1, 1979,* is required of certain junkyards or motor vehicle wrecking facilities licensed under this title. The cost of any additional screening shall be borne or reimbursed by the department of highways."

Section 4. Section 75-15-223, MCA, is amended to read:

"75-15-223. Authority to acquire interest in land for screening and removal of junkyards, motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, and sanitary landfills. (1) When the department of highways determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the department of highways determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange, or condemnation such interests in lands as may be necessary to secure the relocation, removal, or disposal of junkyards, *motor vehicle graveyards, motor vehicle wrecking facilities, garbage dumps, or sanitary landfills* which were either lawfully:

(a) in existence on October 22, 1965;

(b) along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

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(c) established on or after January 1, 1968.

(3) The department of highways shall pay just compensation to the owner for the relocation, removal, or disposal of any such *facility.*

(4) Any new site chosen by the department of highways pursuant to subsection (2) for the relocation of a garbage dump or sanitary landfill must be approvable as the site of a solid waste management system pursuant to Title 75, chapter 10, part 2, and the rules promulgated under authority of that part."

Section 5. **Repealer.** Sections 75-15-212 and 75-15-213, MCA, are repealed.

Section 6. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 2, 1983.

CHAPTER NO. 341

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO TOURIST CAMPGROUNDS AND TRAILER COURTS; TO EXCLUDE FROM REGULATION PLATTED AND FILED TRAILER COURTS SERVED BY PUBLIC WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS; TO PROVIDE FOR THE REGULATION OF WORK CAMPS AND YOUTH CAMPS; AMENDING SECTIONS 50-52-101 THROUGH 50-52-103, 50-52-105, AND 50-52-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-52-101, MCA, is amended to read:

"50-52-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) *"Campground" means a parcel of land available to and principally used by the public for camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.*

(2) "Department" means the department of health and environmental sciences.

(3) "Establishment" means a campground, trailer court, work camp, or youth camp.

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(4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous lots, in the possession of, owned by, or managed by the same person.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of a campground, trailer court, *work camp, or youth camp.*

(6) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(7) "Trailer court" means a parcel of land upon which two or more spaces are *available to the public and designated* for occupancy by trailers or mobile homes for *use as residences, except that the term does not include a parcel composed of platted lots, each lot of which is filed with the county clerk and recorder, contains only one trailer space, and is served by a public water supply system and public sewage system which meet the requirements of rules for such systems adopted pursuant to Title 75, chapter 6, part 1, and which is located within the boundaries of an incorporated city or town.*

(8) "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of such person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. "Housing" does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

(9) "Youth camp" means a parcel of land on which permanent buildings, tents, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. The term does not include any site used solely by the members and their families of a private organization that owns the site."

Section 2. Section 50-52-102, MCA, is amended to read:

"50-52-102. Department to adopt rules. The department shall adopt rules for constructing and operating campgrounds, trailer courts, *work camps, and youth camps* to insure sanitation and protect public health."

Section 3. Section 50-52-103, MCA, is amended to read:

"50-52-103. Duty to obtain license and permit inspections. A person operating *an establishment* shall:

(1) *possess a current* license *to do so* from the department. *However, a campground owned by the state or a political subdivision need not*

obtain a license but must comply with rules applicable to it adopted by the department.

(2) permit inspections by state or local health officers, sanitarians, or other authorized persons at all reasonable times."

Section 4. Section 50-52-105, MCA, is amended to read:

"50-52-105. Violation of chapter a misdemeanor. (1) A person violating a provision of this chapter or a rule made under it shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense, and for the third and subsequent offenses, he shall be punished by a fine of not less than $200 and imprisonment in the county jail not to exceed 90 days.

(2) Fines shall be paid to the county treasurer of the county in which the *establishment* is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund."

Section 5. **Injunction.** The department or a local board of health may petition the district court to enjoin any action in violation of this chapter or of a rule adopted by the department pursuant to this chapter.

Section 6. Section 50-52-301, MCA, is amended to read:

"50-52-301. Health officers to make inspections. The department or local health officer or sanitarian shall inspect *establishments* during reasonable hours as necessary."

Section 7. **Codification instruction.** Section 5 is intended to be codified as an integral part of Title 50, chapter 52, part 1, and the provisions of Title 50, chapter 52, apply to section 5.

Section 8. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 2, 1983.

CHAPTER NO. 342

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO COUNTY FAIRS; AMENDING SECTIONS 7-21-3403, 7-21-3408, 7-21-3409, 7-21-3414, AND 7-21-3425, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-21-3403, MCA, is amended to read:

"7-21-3403. Qualifications for office. Persons appointed as county fair commissioners shall be well qualified to perform the duties of organizing and successfully carrying on the county fair."

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Section 2. Section 7-21-3408, MCA, is amended to read:

"7-21-3408. Acquisition of property for fair purposes. (1) The board of county commissioners of any county in Montana may purchase, receive by donation, or own and hold land in their respective county as county fairgrounds.

(2) The board which shall avail itself of the foregoing provisions may purchase, erect, construct, and maintain permanent improvements on such fairgrounds."

Section 3. Section 7-21-3409, MCA, is amended to read:

"7-21-3409. Lease of county fairgrounds and buildings. (1) Boards of county commissioners are hereby authorized to lease county fairgrounds and buildings thereon on such terms as they shall deem proper.

(2) In the event same are leased for entertainment purposes, the county commissioners *or county fair commission* shall collect an amount deemed proper by them.

(3) No lease may be executed unless the lessee gives bond or public liability and property damage insurance, or both, as may be required by the board of county commissioners or the county fair commission.

(4) No lease shall be executed unless the lessee shall agree to furnish adequate police protection over all property so leased. Any lease shall be subject to immediate cancellation by the board *or commission* in case the lessee fails to maintain order or to properly police the grounds.

(5) All money received from the leasing of fairgrounds shall be deposited in the *fair* fund of the county.

(6) Nothing herein shall be construed to prevent county commissioners *or the fair commission* from *allowing* schools to use fairgrounds for athletic or other public school purposes."

Section 4. Section 7-21-3414, MCA, is amended to read:

"7-21-3414. Management of capital improvement fund. (1) Money for the capital improvement fund shall be derived from the unexpended money obtained by the fair commission under 7-21-3410.

(2) The capital improvement fund may not exceed at any time a competent estimate of the cost of the adopted capital improvement program.

(3) All interest earned on the money in the capital improvement fund shall be paid into the county *fair* fund."

Section 5. Section 7-21-3425, MCA, is amended to read:

"7-21-3425. Board of directors of fair district. (1) The members of the respective county fair commissions of the counties forming a fair district *shall appoint one member of their commission to the* board of directors for the fair district.

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(2) After a district has been formed and a county is added thereto, the members of the county fair commission of the county added to the fair district *shall appoint one member of their commission to* the board of directors *for* the fair district."

Approved April 2, 1983.

CHAPTER NO. 343

AN ACT TO GENERALLY REVISE THE INQUEST STATUTES; AMENDING SECTIONS 46-4-201, 46-4-202, AND 46-4-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-4-201, MCA, is amended to read:

"46-4-201. Inquest — definition, when held, how conducted. (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person.

(2) The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, when the death of any person occurs in a jail or penal institution or from the use of a firearm by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct the coroner to hold an inquest.

(3) If an inquest is held, the proceedings shall be public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. Such inquest is to be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection (4), the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county."

Section 2. Section 46-4-202, MCA, is amended to read:

"46-4-202. Summoning and swearing in of jurors — instructions. (1) For holding such inquest, the coroner must summon a jury of not more than nine persons qualified by law to serve as jurors.

(2) When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his

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death and to render a true verdict thereon, according to the evidence offered to them or arising from the inspection of the body.

(3) The coroner must instruct the jurors as to their duties."

Section 3. Section 46-4-204, MCA, is amended to read:

"46-4-204. Witness compelled to attend — examination. *(1)* A witness served with a subpoena may be compelled to attend and testify or be punished as upon a subpoena issued by a justice of the peace.

(2) The coroner shall and the county attorney may examine each witness, after which the witness may be examined by the jurors."

Approved April 2, 1983.

CHAPTER NO. 344

AN ACT PROVIDING FOR A FEE FOR LATE RENEWAL OF A CHIROPRACTOR LICENSE; CLARIFYING THAT CONTINUING EDUCATION PROGRAMS MUST BE APPROVED BY THE BOARD OF CHIROPRACTORS; AMENDING SECTION 37-12-307, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-12-307, MCA, is amended to read:

"37-12-307. Annual renewal of license — fee — continuing education required. A license expires on September 1 of each year and shall be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors *approved by the board. All applicants for renewal who have not paid the renewal fee prior to October 1 of each year shall pay an additional late fee prescribed by the board."*

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1983.

CHAPTER NO. 345

AN ACT EXEMPTING MOTORCYCLES THAT ARE REGISTERED AS COLLECTOR'S ITEMS FROM REQUIREMENTS RELATING TO HEADLIGHTS AND TAILLIGHTS; PROVIDING THAT IF NOT PROPERLY EQUIPPED THEY MAY NOT BE OPERATED AT NIGHT; AMENDING SECTIONS 61-8-359, 61-9-203, AND 61-9-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-359, MCA, is amended to read:

"61-8-359. Riding on motorcycles. (1) A person operating a motorcycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry

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any other person; nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or the view of the operator.

(3) No person operating a motorcycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Side saddle" riding on a motorcycle is prohibited.

(5) Motorcycles are to be operated with lights on at all times when operated on any public highway or street, *except that if the motorcycle is registered under 61-3-411 as a collector's item, it may be operated without lights from one-half hour before sunrise to one-half hour after sunset if persons and vehicles are clearly discernible at a distance of 500 feet.*

(6) Not more than two motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles, including motorcycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two abreast in a single traffic lane.

(8) Every person riding a motorcycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application."

Section 2. Section 61-9-203, MCA, is amended to read:

"61-9-203. Headlamps on motor vehicles. (1) Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two headlamps with at least one on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this chapter.

(2) Every motorcycle and every motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations of this chapter. *If a motorcycle is registered under 61-3-411 as a collector's item, it need not be equipped with headlamps, but if it is not so equipped it may not be operated upon a highway or street from one-half hour after sunset to one-half hour before sunrise or if persons and vehicles are not clearly discernible at a distance of 500 feet.*

(3) Every headlamp upon every motor vehicle, including every motorcycle and every motor-driven cycle, shall be located at a height measured from the center of the headlamp of not more than 54 inches or less than 24 inches to be measured as set forth in 61-9-202(2)."

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Section 3. Section 61-9-204, MCA, is amended to read:

"61-9-204. Taillamps. (1) Every motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least one taillamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the taillamp on the rearmost vehicle need actually be seen from the distance specified. Further, every such above-mentioned vehicle, other than a truck tractor, registered in this state and manufactured or assembled after January 1, 1956, shall be equipped with at least two taillamps mounted on the rear, which when lighted as herein required, shall comply with the provisions of this section.

(2) Every taillamp upon every vehicle shall be located at a height of not more than 72 inches or less than 15 inches.

(3) Either taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

(4) Taillamps are not required on a motorcycle that is registered under 61-3-411 as a collector's item, but such motorcycle may not be operated on a highway or street from one-half hour after sunset to one-half hour before sunrise or when persons and vehicles are not clearly discernible at a distance of 500 feet unless it is equipped with the required taillamps."

Approved April 2, 1983.

CHAPTER NO. 346

AN ACT TO GENERALLY REVISE THE DOLLAR VALUE RESTRICTIONS ASSOCIATED WITH APPRAISALS, PURCHASES, AND SALES OF REAL PROPERTY BY COUNTIES; AMENDING SECTIONS 7-8-2202, 7-8-2212, 7-8-2214, 7-8-2216, AND 7-8-2217, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2202, MCA, is amended to read:

"7-8-2202. Appraisal required for certain purchases of real property. Unless otherwise provided, no purchase of real property exceeding the value of *$2,500 may* be made unless the value of the same has been previously estimated by three disinterested citizens of the county appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor."

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Section 2. Section 7-8-2212, MCA, is amended to read:

"**7-8-2212. Notice of sale and public auction required for certain sales.** Unless otherwise provided, if the real or personal property sought to be sold is reasonably of a value in excess of $2,500, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county. The notice shall be published once a week for 4 successive weeks and posted in five public places in the county."

Section 3. Section 7-8-2214, MCA, is amended to read:

"**7-8-2214. Appraisal required for certain sales.** Unless otherwise provided:

(1) in all sales of property of a value in excess of $2,500, there must, before any sale, be an appraisal thereof by the board and at a price representing a fair market value of such property. Such appraised value shall be stated in the notice of sale.

(2) no sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within 3 months prior to the date of the sale."

Section 4. Section 7-8-2216, MCA, is amended to read:

"**7-8-2216. Sale of county property to school district.** (1) The board of county commissioners shall have the power to sell directly to the school district, without the necessity of a public auction, any real or personal property, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, for its appraised value, which shall represent a fair market value of such property.

(2) If the property to be sold to the school district is reasonably of a value in excess of $2,500, notice of the sale shall be given by publication in a newspaper in said county. The notice shall be published once a week for 4 successive weeks and posted in five public places in the county."

Section 5. Section 7-8-2217, MCA, is amended to read:

"**7-8-2217. Procedure for sale of property of lesser value.** (1) If the property to be sold is reasonably of a value of less than $2,500, sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners may appear to be to the best interests of the county.

(2) If it be at public sale, notice shall be given by posting in five public places in the county at least 5 days before the date of sale."

Approved April 2, 1983.

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CHAPTER NO. 347

AN ACT TO CLARIFY WHICH SUBJECTS MAY BE INCLUDED IN CHIROPRACTIC EXAMINATIONS AND TO MAKE IT DISCRETIONARY FOR THE BOARD OF CHIROPRACTORS TO LICENSE, WITHOUT ADMINISTERING A CLINICAL PROFICIENCY EXAMINATION, AN APPLICANT HOLDING A VALID CERTIFICATE FROM THE NATIONAL BOARD OF CHIROPRACTIC EXAMINERS; AMENDING SECTION 37-12-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-12-304, MCA, is amended to read:

"37-12-304. Examinations — subjects. (1) Examinations for a license to practice chiropractic shall be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations shall be made in writing, *on* subjects *taught in chiropractic colleges, including the use of x-ray equipment and radiographs.* Additional subjects may be prescribed by the board to meet new conditions. A license shall be granted to applicants who correctly answer 75% of all questions asked, *including x-ray questions.* If an applicant fails to answer correctly 60% of the questions on any branch of the examination, he is not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. *The board may require an applicant to* satisfactorily *pass* a clinical proficiency examination before *being issued a license, even though he holds a valid certificate from the national board of chiropractic examiners.*"

Approved April 2, 1983.

CHAPTER NO. 348

AN ACT TO AMEND THE LAWS RELATING TO THE APPLICATION AND EXAMINATION FOR A LICENSE TO PRACTICE MEDICINE; AMENDING SECTIONS 37-3-309 AND 37-3-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-309, MCA, is amended to read:

"37-3-309. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by

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oath and in a form prescribed by the board. The application shall be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's information.

(2) An applicant for a license on the basis of an examination shall file his application at least *60* days prior to the announced date of the examination. If the applicant is not at the time of filing his application a graduate of but is then in attendance at an approved medical school, he shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive his diploma at the end of the then-current school term. The applicant may not be granted a certificate until he has filed with the department his diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1) of this section, and no license may be issued to him until he has satisfied the board that he has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter."

Section 2. Section 37-3-311, MCA, is amended to read:

"37-3-311. Examination. (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers shall be identified by *both the name of the applicant and* a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.

(2) An applicant must meet the requirements of 37-3-305 prior to taking a scheduled examination.

(3) An applicant who is a graduate of a foreign medical school shall have passed an examination given by the education council for foreign medical graduates or successors.

(4) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for this.

(5) The board may use other Montana physicians to assist in preparing the examination.

(6) A person may not be granted a license to practice medicine if he fails to attain an average grade of at least 75%. If an applicant fails to

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meet the minimum grade requirements in his first examination, he may, after not less than 6 months or more than 12 months, be reexamined. He may take one additional examination but not less than 1 year after the date of the last preceding examination. An examination fee shall be charged for each additional examination. If an applicant is prevented through no fault of his own from taking a scheduled examination, he may, within 2 years, be examined without submitting a new application."

Approved April 2, 1983.

CHAPTER NO. 349

AN ACT TO GENERALLY REVISE AND CLARIFY THE LICENSING LAWS FOR DENTISTS AND DENTAL HYGIENISTS; ALLOWING MORE THAN ONE BOARD MEMBER TO ATTEND THE NATIONAL ASSOCIATION MEETINGS; PROVIDING A GENERAL RULEMAKING STATUTE FOR THE BOARD; REVISING LICENSE AND EXAMINATION QUALIFICATIONS AND PROVIDING FOR CONTINUED COMPETENCY FOR ANNUAL LICENSE RENEWAL; REVISING THE DEFINITION OF THE PRACTICE OF DENTAL HYGIENE; DELETING THE TEMPORARY LICENSE PROVISION FOR DENTAL HYGIENISTS; PROHIBITING A LICENSE FEE ON DENTAL HYGIENISTS BY A LOCAL GOVERNMENT AND CLARIFYING THE SIMILAR PROHIBITION FOR DENTISTS; AND MAKING RULEMAKING DISCRETIONARY REGARDING AUXILIARY PERSONNEL; AMENDING SECTIONS 37-4-204, 37-4-301, 37-4-307, 37-4-401, 37-4-402, 37-4-404, 37-4-406, AND 37-4-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-4-204, MCA, is amended to read:

"37-4-204. Affiliation with national association authorized — delegates. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send *delegates* to the meetings of the association."

Section 2. **Rulemaking.** The board may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative Procedure Act.

Section 3. Section 37-4-301, MCA, is amended to read:

"37-4-301. Examination — qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part, a practical or clinical part, and an oral interview with the board which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination

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in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of such written and practical examination shall be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, *periodontics* and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(4) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant*; and*

(h) copies of all other state licenses that are held by the applicant.

(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(6) Applicants may not take the jurisprudence examination or the oral interview without first having completed *and passed* all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."

Section 4. Section 37-4-307, MCA, is amended to read:

"37-4-307. Annual renewal fee — default — active, inactive status — continuing education — limit on local authority to

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license. (1) *Every* licensed dentist shall pay *each year* a renewal fee *to* the board. *The renewal fee must be set by the board commensurate with costs.* Notice of the change in the amount of renewal fees *must* be given to each dentist registered in this state by the department.

(2) *Payment of the* annual *renewal fee must* be made prior to March 1 of each year, and a *license renewal must* be issued by the department. *A reasonable late fee is required if the annual renewal fee is not paid before March 1.*

(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dentistry because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.

(5) In case of default in payment of the annual renewal fee by a *licensee*, his license *must* be revoked by the board.

(a) The board shall give the licensee 30 days' notice *of its proposed revocation action. The notice must be sent by* certified letter addressed to the last-known address of the *licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.*

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for revocation, the license may *not* be revoked.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty fee for each year;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence satisfactory to the board of good character and competence.

(6) Every dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

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(7) No *unit of local government, including those exercising self-government powers, may impose a* license fee on *a dentist licensed under this chapter.*"

Section 5. Section 37-4-401, MCA, is amended to read:

"**37-4-401. Practice of dental hygiene.** The practice of dental hygiene is *services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are* educational, therapeutic, prophylactic, or preventive *procedures* in nature, as the board in writing defines and authorizes. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues *other than root planing and subgingival curettage*;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs, medications, or work authorizations."

Section 6. Section 37-4-402, MCA, is amended to read:

"**37-4-402. License — examination.** (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided in subsections (1), (2), and (3) of 37-4-404, no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part, a practical or clinical part, and an oral interview with the board which may include questions pertaining to the practice of dental hygiene. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(5) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

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(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant;

(h) copies of all other state licenses that are held by the applicant.

(6) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination. *Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.*

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures."

Section 7. Section 37-4-404, MCA, is amended to read:

"37-4-404. Admission of dental hygienists from other states — reciprocity. (1) On the payment of a fee prescribed by the board and after satisfactory practical examination demonstrating his proficiency, a dental hygienist may be granted a license to practice dental hygiene in this state without being required to take an examination in theory if he:

(a) has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state;

(b) has been lawfully and continuously engaged in the practice of dental hygiene for a period of 1 year or more immediately before filing his application to practice in this state; and

(c) deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments.

(2) *No* license may be issued without an examination in theory to the applicant unless the state or territory from which the certificate has been granted extends a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state who have moved to the other state.

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(3) The board may enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene are, in the opinion of the board, equal to those of this state."

Section 8. Section 37-4-406, MCA, is amended to read:

"37-4-406. Annual renewal fee — default — active, inactive status — continuing education — revocation of license. (1) *Every* licensed dental hygienist shall pay *each year* a renewal fee *to* the board. *The renewal fee must be set by the board commensurate with costs. The renewal must be for either active or inactive status, as defined by rules of the board.*

(2) Payment of the annual renewal fee must be made prior to March 1 of each year, and a license renewal must be issued by the department. A reasonable late fee is required if the annual renewal fee is not paid before March 1.

(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dental hygiene because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.

(5) In *case of* default *in* payment *of the renewal fee by any licensee,* the board *must revoke the license.*

(a) The board shall give the licensee 30 days' notice *of its proposed revocation action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.*

(b) The payment of the renewal fee on or before the time *set for revocation,* with *a reasonable late fee* set by the board, excuses the default.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty for each year;

(ii) the applicant produces evidence, satisfactory to the board of good standing with the dental hygiene regulatory agencies of any jurisdiction

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in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence satisfactory to the board of good character and competence.

(6) Every dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

(7) The board may, *after a hearing,* revoke or suspend the license of a dental hygienist for violating this chapter.

(8) No unit of local government, including those exercising self-government powers, may impose a license fee on a dental hygienist licensed under this chapter."

Section 9. Section 37-4-408, MCA, is amended to read:

"**37-4-408. Auxiliary personnel — employment, duties, and limitations.** The board *may,* within the limitations of this chapter, adopt rules which define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by any licensed dentist in his office, except that nothing herein shall be construed to allow the board by rule to provide for delegation by a licensed dentist to any such auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by *all* dental auxiliaries, as permitted by board rules, shall be under the direct supervision of the licensed dentist employing such personnel."

Section 10. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 37, chapter 4, and the provisions of Title 37, chapter 4, apply to section 2.

Section 11. **Effective date.** This act is effective July 1, 1983.

Approved April 2, 1983.

CHAPTER NO. 350

AN ACT TO PERMIT AN ELEMENTARY SCHOOL DISTRICT AND A HIGH SCHOOL DISTRICT REPRESENTING TWO SEPARATE SOCIAL SECURITY REPORTING ENTITIES TO MERGE INTO A SINGLE REPORTING ENTITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Merger of reporting entities.** If the approval of referenda at different times results in the establishment of two separate social security reporting entities for a high school district and an elementary school district and the high school building is located in the elementary school district, the state agency shall, upon request of the boards of trustees in both districts, merge the two reporting entities to form a single reporting entity if the elementary school district and high school district:

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(1) have boards of trustees of which a majority of each board is composed of the same persons;

(2) are administered by the same executive officer; and

(3) have payroll calculations made in the same payroll application.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 1, part 8, and the provisions of Title 19, chapter 1, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 2, 1983.

CHAPTER NO. 351

AN ACT TO REQUIRE STATE AGENCIES TO ADOPT, IN CONSULTATION WITH THE MONTANA HISTORICAL SOCIETY, RULES OUTLINING PROCEDURES FOR THE IDENTIFICATION AND PRESERVATION OF HERITAGE PROPERTIES AND PALEONTOLOGICAL REMAINS OR TO FOLLOW RULES FOR THAT PURPOSE ADOPTED BY THE HISTORIC PRESERVATION OFFICER; AMENDING SECTIONS 22-3-423 AND 22-3-424, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-423, MCA, is amended to read:

"**22-3-423. Duties of historic preservation officer.** The historic preservation officer has the following duties and responsibilities:

(1) follow necessary procedures to qualify the state for money that is now or will be made available under any act of congress of the United States or otherwise for purposes of historic preservation;

(2) conduct an ongoing statewide survey to identify and document heritage properties and paleontological remains;

(3) maintain a state inventory file of heritage properties and paleontological remains and maintain a repository for all such inventory work done in the state;

(4) evaluate and formally nominate potential register properties according to the criteria established by the register;

(5) prepare and annually review the state preservation plan, register nominations, and historic preservation grant activity;

(6) maintain, publish, and disseminate information relating to heritage properties and paleontological remains in the state;

(7) cooperate with and assist local, state, and federal government agencies in comprehensive planning that allows for the preservation of heritage properties and paleontological remains;

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(8) enter into cooperative agreements with the federal government, local governments, and other governmental entities or private landowners or the owners of objects to ensure preservation and protection of registered properties;

(9) adopt rules outlining procedures by which a state agency that has no approved rules under 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter such properties;

(10) any other necessary or appropriate activity permitted by law to carry out and enforce the provisions of this part."

Section 2. Section 22-3-424, MCA, is amended to read:

"22-3-424. Duties of state agencies. State agencies shall:

(1) *in consultation with the historical society* adopt *rules* for the *identification and* preservation of heritage properties and paleontological remains on lands owned by the state *to* avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state *or, in the absence of such rules, act in compliance with rules adopted under 22-3-423.*

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state is given appropriate consideration in state agency decisionmaking;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains."

Approved April 4, 1983.

CHAPTER NO. 352

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO A CLAIM OF MENTAL DISEASE OR DEFECT IN CRIMINAL PROCEEDINGS; ALLOWING A COUNTY ATTORNEY TO RAISE THE ISSUE OF A CRIMINAL DEFENDANT'S LACK OF FITNESS TO PROCEED WITH TRIAL; PROVIDING FOR THE DISPOSITION OF THOSE DEFENDANTS FOUND UNFIT TO PROCEED; CORRECTING A REFERENCE IN PRIOR LEGISLATION DESCRIBING A MENTAL DISEASE OR DEFECT; AMENDING SECTION 46-14-221, MCA, AND CHAPTER 713, SECTION 11, LAWS OF 1979.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the defendant or his counsel *or by the*

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county attorney. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures. *The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that he is still unfit to proceed and that it does not appear that he will become fit to proceed within the reasonably foreseeable future, the* proceeding against him shall be *dismissed*, except as provided in subsection (4) of this section, and the *county attorney shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.*

(3) If the court determines that the defendant lacks fitness to proceed because he is developmentally disabled as provided in 53-20-102(4), the proceeding against him shall be dismissed and the county attorney shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are chargeable to the state but the state may recover them from the estate of the defendant."

Section 2. Chapter 713, section 11, Laws of 1979, is amended to read:

"Section 11. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in [section *10*], it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in [section *10*], any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court

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with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A defendant whose sentence has been imposed under [section 11(2)], may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Approved April 4, 1983.

CHAPTER NO. 353

AN ACT TO REVISE AND CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LIVESTOCK TO RECOVER ALL INVESTIGATIVE AND OTHER RELATED EXPENSES FROM PERSONS WHO VIOLATE LIVESTOCK LAWS OR DEPARTMENT RULES; AMENDING SECTION 81-2-109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-2-109, MCA, is amended to read:

"81-2-109. Expenses, how paid — lien and foreclosure. *(1) If there is no violation of law or department rule, the* expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of diseased or exposed livestock by the department and the sanitary inspection of dairies, packinghouses, meat depots, slaughterhouses, milk depots, and other premises shall be paid for by the department. However, the owner of the livestock or property is liable for all expenses, except the salary of the *designated* supervising officer representing the department, when the owner, agent, or person in charge of the livestock or property has violated the *law or* rules of the department.

(2) The expenses for which an owner, agent, or person in charge is liable under subsection (1) include:

(a) all investigatory expenses, including travel, meals, and lodging of all investigating officers representing the department; and

(b) all other expenses, extraordinary or otherwise, that in the judgment of the department are reasonably necessary to ensure that there has been or will be compliance with all applicable laws and rules.

(3) The department, at the conclusion of an investigation of a violation, shall serve notice on the violator, informing him of all expenses for which he is liable. The notice must state that if a response is not sent within 30 days of receipt of the notice, the notice is prima facie evidence

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of the reasonableness of the expenses and of the violator's liability for them.

(4) A showing by the department that a response to the notice required by subsection (3) was not received within 30 days of receipt of the notice is prima facie evidence of the reasonableness of the expenses stated and of the liability of the violator for those expenses.

(5) These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession and may be foreclosed in the name of the agent of the department by sale at public auction of the stock or as many as may be necessary to pay the sum of the costs, after 10 days' notice by posting in three public places in the county. The lien may also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses."

Approved April 4, 1983.

CHAPTER NO. 354

AN ACT TO AMEND THE REQUIREMENTS FOR ELIGIBILITY FOR EXAMINATION AND REGISTRATION AS A LAND SURVEYOR OR LAND SURVEYOR-IN-TRAINING; AMENDING SECTIONS 37-67-308 THROUGH 37-67-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-67-308, MCA, is amended to read:

"37-67-308. General qualifications of applicants for registration as land surveyor or land surveyor-in-training. (1) To be eligible for admission to examination for land surveyor or land surveyor-in-training, an applicant must be of good character and reputation. The applicant shall submit five references with his application for registration as a land surveyor, three of which references shall be registered land surveyors having personal knowledge of his land surveying experience. In the case of an application for certification as a land surveyor-in-training, the applicant shall submit three references, one of whom shall be a registered land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical and land surveying experience, exhibits of land surveying projects of which he has been in charge, recommendations by references, and a reviewing of these categories. An interview may be held at the board's discretion. Educational credit for institute courses, correspondence courses, etc., shall be determined by the board. Minimal educational requirements *for those applicants who intend to use education as evidence of qualification* must include 40 quarter credit

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hours in surveying techniques and principles and practices of surveying curricula prescribed by the board."

Section 2. Section 37-67-309, MCA, is amended to read:

"37-67-309. Qualifications of applicant for registration as land surveyor. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor:

(1) have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying with a minimum of 3 years of experience in charge of land surveying projects under the supervision of a registered land surveyor and have passed the examinations as required by the board;

(2) have 2 years of formal education in an approved curriculum above high school level with at least 90 quarter credit hours passed, or equivalent semester hours, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying with a minimum of 4 years of experience in charge of land surveying projects under the supervision of a registered land surveyor and have passed the examinations as required by the board; *or*

(3) present evidence satisfactory to the board that he has had at least 10 years of combined office and field experience in land surveying, with a minimum of 6 years of experience in charge of land surveying projects in Montana, under the supervision of a registered land surveyor, and has passed the examinations as required by the board."

Section 3. Section 37-67-310, MCA, is amended to read:

"37-67-310. Qualifications of applicant for registration as land surveyor-in-training. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor-in-training:

(1) Have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that he has had, in addition thereto, at least 2 years of combined office and field experience in land surveying with a minimum of 1 year in charge of land surveying projects under the supervision of a land surveyor and have passed the written examinations required by the board.

(2) Have at least 2 years of formal education in an approved curriculum above high school level with at least 90 quarter credit hours or equivalent semester hours passed or the equivalent approved by the board and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying with a minimum of 2 years in charge of land surveying projects under the supervision of a land surveyor and have passed the written examinations required by the board; *or*

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(3) present evidence satisfactory to the board that he has had at least 6 years of combined office and field experience in land surveying with a minimum of 4 years of experience in charge of land surveying projects in Montana, under the supervision of a registered land surveyor, and has passed the examinations required by the board."

Approved April 4, 1983.

CHAPTER NO. 355

AN ACT REVISING EXEMPTIONS TO COMPULSORY ENROLLMENT IN PUBLIC SCHOOLS BY PROVIDING THAT A CHILD MAY BE EXEMPT IF ENROLLED IN A NONPUBLIC OR HOME SCHOOL WHICH KEEPS ATTENDANCE AND IMMUNIZATION RECORDS, PROVIDES 180 DAYS OF PUPIL INSTRUCTION OR THE EQUIVALENT, PROVIDES AN ORGANIZED COURSE OF STUDY, AND IS HOUSED IN A FACILITY MEETING FIRE AND HEALTH STANDARDS; PROVIDING IN ADDITION THAT, FOR STUDENTS IN HOME SCHOOLS, NOTIFICATION OF ATTENDANCE MUST BE MADE TO SCHOOL AUTHORITIES; AMENDING SECTION 20-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-102, MCA, is amended to read:

"20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

(a) the child's 16th birthday;

(b) the date of completion of the work of the 8th grade.

(2) Such parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

(a) enrolled in a school of another district or state under any of the tuition provisions of this title;

(b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) excused from enrollment in a school of the district when it is shown that his bodily or mental condition does not permit his attendance and the

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child cannot be instructed under the special education provisions of this title;

(d) excused from compulsory school attendance upon a determination by a district judge that such attendance is not in the best interest of the child;

(e) excused by the board of trustees upon a determination that such attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; *or*

(f) enrolled in a nonpublic or home school that complies with the provisions of [section 2]. For the purposes of this subsection (f), a home school is the instruction by a parent of his child, stepchild, or ward in his residence and a nonpublic school includes a parochial, church, religious, or private school.

(3) The excuse provided for in subsection (2)(d) of this section shall be issued by the district superintendent or the county superintendent when there is no district superintendent employed by the district. Whenever an excuse is denied by the applicable official, an appeal of such decision may be made to the district court of the county within 10 days after the decision upon giving a bond in the amount set by the court to pay all costs of the appeal. The decision of the district court shall be final."

Section 2. **Nonpublic school requirements for compulsory enrollment exemption.** To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school shall:

(1) maintain records on pupil attendance and disease immunization and make such records available to the county superintendent of schools on request;

(2) provide at least 180 days of pupil instruction or the equivalent in accordance with 20-1-301 and 20-1-302;

(3) be housed in a building that complies with applicable local health and safety regulations;

(4) provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111; and

(5) in the case of home schools, notify the county superintendent of schools of the student's attendance at the school.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to section 2.

Section 4. **Effective date.** This act is effective July 1, 1983.

Approved April 4, 1983.

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CHAPTER NO. 356

AN ACT TO PROVIDE FOR ONE-STEP LICENSING OF CERTAIN FACILITIES UNDER THE DEPARTMENTS OF HEALTH AND ENVIRONMENTAL SCIENCES, SOCIAL AND REHABILITATION SERVICES, AND INSTITUTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of institutions, the department of health and environmental sciences, and the department of social and rehabilitation services.

(2) "Facility" means:

(a) for the department of institutions, nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol/drug treatment or emergency detoxification;

(b) for the department of social and rehabilitation services:

(i) adult services homes for the developmentally disabled, adult independent and semi-independent living facilities, and adult foster care facilities;

(ii) children's services achievement homes, maternity homes, attention homes, aftercare group homes, district youth guidance homes, foster family care facilities, child-care agencies, and community homes for the developmentally disabled;

(c) for the department of health and environmental sciences:

(i) public accommodations, including roominghouses and retirement homes, hotels, and motels;

(ii) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(iii) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(iv) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license.

Section 2. **One-step licensing.** Each department shall provide one-step licensing of all facilities under its jurisdiction. One-step licensing is at

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a minimum the provision of a designated office within the department or, by agreement between departments, in another department, responsible for issuing facility licenses. The one-step licensing office shall facilitate intra-departmental certifications for licensure. When practicable, one-step licensure also includes:

(1) the coordination of all governmental licensing functions, state and local, required for the licensure of a facility for a program or a service and for health and safety standards. The coordination must include at a minimum the names, addresses, and functions of all governmental authorities enforcing such standards and may include the requirement that the responsible office be a clearinghouse for all forms and applications for other agencies and for assuming the responsibility for insuring timely inspections, reviews, and application processing by other agencies.

(2) the use of departmental employees to inspect specified types of facilities for particular health and safety standards as provided in [section 3].

Section 3. **Inspections by departmental employees.** (1) Each department may, by joint rule with a state agency or by interlocal agreement with other governmental entities, authorize departmental employees to perform specific health and safety inspections for certain classes of facilities under the jurisdiction of another department or agency. Such inspections may be limited by type of facility, scope of inspection, and type of inspection, such as original application, renewal application, routine or unannounced inspection, or other identifiable inspection situations.

(2) The inspecting authority, prior to authorizing employees of another department or agency to make an inspection, may require minimal standards of knowledge or training relevant to the type of inspection to be conducted. The inspecting authority may require periodic reexamination of such employees for necessary knowledge and ability.

(3) The inspecting authority delegates authority to the employees of another department or agency and is responsible for the quality of the inspections. The inspecting authority shall perform an inspection delegated to such an employee if the other department or agency or the head of the facility believes that the inspection situation is unique or that the employee is in error. The result of an inspection by the inspecting authority takes precedence over an inspection by an employee of another department or agency.

Approved April 4, 1983.

CHAPTER NO. 357

AN ACT TO INCREASE THE AGE LIMIT FOR PURPOSES OF THE CHILD SERVICES EXCLUSION FROM THE DEFINITION OF EMPLOYMENT IN THE UNEMPLOYMENT COMPENSATION LAW; AMENDING SECTION 39-51-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

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(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of *21* in the employ of his father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution, which normally

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maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Approved April 4, 1983.

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CHAPTER NO. 358

AN ACT TO ELIMINATE THE REQUIREMENT THAT A CORPORATION MUST HAVE A RATIO OF CURRENT ASSETS TO CURRENT LIABILITIES OF AT LEAST 1 ½ TO 1 BEFORE AN INVESTMENT OF PUBLIC FUNDS CAN BE MADE IN THE CORPORATE COMMERCIAL PAPER OF THAT CORPORATION; AMENDING SECTION 17-6-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-211, MCA, is amended to read:

"17-6-211. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, or of any corporation in which the United States government is a voting shareholder by act of congress; provided that all investments under this subsection (b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of *highest* quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, and savings and loan associations located in Montana, provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

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(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property, provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds and the fund provided for in 17-6-203, subsection (4) may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period;

(c) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund;

(d) subsection (c) does not apply to funds provided for in 17-6-203(4).

(4) The board of investments shall endeavor to direct the state's investment business to those investment firms and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will

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benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana."

Approved April 4, 1983.

CHAPTER NO. 359

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE BOARD OF HOUSING; AUTHORIZING THE ISSUANCE OF TAXABLE OR TAX EXEMPT BONDS; REMOVING THE LIMIT ON INTEREST RATES AT WHICH BONDS MAY BE SOLD; PROVIDING FOR A PUBLIC HEARING PRIOR TO FINANCING DEVELOPMENTS FOR RENTAL UNITS FOR A FOR-PROFIT SPONSOR; AMENDING SECTIONS 90-6-103, 90-6-109, AND 90-6-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-103, MCA, is amended to read:

"90-6-103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of housing created in 2-15-1814.

(2) "Bond" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by the board pursuant to this part, *including those on which interest payments are taxable and those on which interest payments are tax exempt.*

(3) "Capital reserve account" means the capital reserve account provided for in 90-6-107.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Federally insured mortgage" means a mortgage loan for land development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality thereof or a commitment by the United States or a governmental agency or instrumentalities thereof to insure such a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality thereof.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more thereof.

(8) "Housing development" means any work or undertaking financed in whole or in part under this part for the primary purpose of acquiring, constructing, or rehabilitating dwelling accommodations for persons or families of lower income in need of housing. An undertaking may include any

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buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable in connection therewith, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities as the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs incurred in a housing development approved by the board as reasonable and necessary, including but not limited to:

(a) cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition, and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution, and financing of the housing development and the finding of an eligible mortgagee or mortgagees for the housing development;

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus, and similar facilities related to the real property;

(g) cost of land improvements, including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited profit housing sponsor;

(j) an allowance established by the board for working capital and contingency reserves and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) costs of other items, including tenant relocation, as the board determines to be reasonable and necessary for the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsors, nonprofit corporations, or other legal entities or any combination thereof that are:

(a) approved by the board;

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(b) qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development;

(c) subject to the rules of the board and other terms and conditions set forth in this part.

(11) "Lending institution" means any public or private entity or governmental agency approved by the board maintaining an office in this state and authorized by law to make or participate in making residential mortgages in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary to carry out this part.

(13) "Mortgage" means a mortgage deed, deed of trust, or other instrument which shall constitute a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time the mortgage is acquired, which does not expire for at least that number of years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest-bearing obligation secured by a mortgage on land and improvements in the state.

(15) "Nonprofit housing sponsor" means a housing cooperative formed under Title 35, chapter 15, or a nonprofit corporation formed under Title 35, chapter 2, restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary, and whose articles of incorporation provide in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization shall be used exclusively for housing development purposes and no part of the net income or net earnings of the organization shall inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain therefrom or seeking to eliminate or minimize losses in any transactions therewith, except that the limitations shall apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

(16) "Persons and families of lower income" means persons and families with insufficient personal or family income or other financial resources

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who require assistance under this part, as determined by the board, taking into consideration:

(a) the amount of the total personal and family income, assets, and other financial resources available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families due to age or physical handicaps.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe, and sanitary housing or to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board."

Section 2. Section 90-6-109, MCA, is amended to read:

"90-6-109. Procedure prior to financing of housing developments. *(1)* The board may finance housing developments under this part only when the board finds that:

(a) there exists a shortage of decent, safe, and sanitary housing at rentals or prices which persons and families of lower income can afford within the general housing market area to be served by the proposed housing development;

(b) private enterprise has not provided an adequate supply of decent, safe, and sanitary housing in the housing market area at rentals or prices which persons or families of lower income can afford or provided sufficient mortgage financing for housing developments for occupancy by persons or families of lower income;

(c) the housing sponsor undertaking the proposed housing development in this state will supply well planned, well designed housing, and such sponsors are financially responsible;

(d) the housing development to be assisted under this part will be of public use and will provide a public benefit, taking into account the existence of local government comprehensive plans, housing and land use plans and regulations, areawide plans, and other public desires;

(e) the housing development does not involve the construction of second homes (for purposes of this paragraph, "second home" means a home which would not qualify as the primary residence of the taxpayer for federal income tax purposes relating to capital gains on the sale or exchange of residential property); and

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(f) as to direct loans it is necessary to qualify for federal funds.

(2) The findings required under subsection (1) must be made after a public hearing whenever the financing of housing relates to a development for rental units owned by a for-profit housing sponsor. The board shall conduct the hearing unless it directs the governing body of the local government in which the proposed housing development is to be located to conduct the hearing."

Section 3. Section 90-6-111, MCA, is amended to read:

"**90-6-111. Bonds and notes.** (1) The board may by resolution, from time to time, issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 90-6-119, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds to pay notes, including interest, and whenever it deems refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be obligations of the board payable out of any revenues, assets, or moneys of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or moneys.

(4) The notes and bonds shall be authorized by resolutions of the board, shall bear a date and shall mature at times as the resolutions provide. A note shall not mature more than 10 years and a bond shall not mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate, or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places within or without the state, and be subject to terms of redemption as provided in resolutions. *The board shall designate whether interest payments on the bonds are taxable or tax exempt.* The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board.

(5) The total amount of notes and bonds outstanding at any one time, except notes or bonds as to which the board's obligation has been satisfied and discharged by refunding or for which reserve for payment or other means of payment have been otherwise provided, may not exceed $675 million."

Approved April 4, 1983.

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CHAPTER NO. 360

AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO ENTER A COMMITMENT AGREEMENT WITH THE BOARD OF HOUSING FOR THE PURCHASE OF MORTGAGE LOANS FINANCED BY THE BOARD OF HOUSING; AMENDING SECTION 17-6-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-211, MCA, is amended to read:

"17-6-211. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, or of any corporation in which the United States government is a voting shareholder by act of congress; provided that all investments under this subsection (b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least 1 ½ to 1 and had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, and savings and loan associations located in Montana, provided, however, that the board of investments shall require pledged securities as specified

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in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property *as provided in this subsection (1)(f) and subsection (5)*, provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds and the fund provided for in 17-6-203, subsection (4) may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period;

(c) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund;

(d) subsection (c) does not apply to funds provided for in 17-6-203(4).

(4) The board of investments shall endeavor to direct the state's investment business to those investment firms and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will

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benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

(5) The board may invest in mortgage loans financed by the board of housing if the mortgages are not in default and meet the requirements of subsection (1)(f). The board may enter into a commitment agreement with the board of housing at the time of an issue of bonds or notes by the board of housing providing for the purchase at a specified future date, not to exceed 15 years from the date of the issue, of all or any portion of the amount of mortgage loans purchased with the proceeds of the issue. The board of investments may charge reasonable fees for any commitment and may agree to purchase the mortgage loans on terms that in the judgment of the board of investments provide a fair market rate of return to the purchasers."

Approved April 4, 1983.

CHAPTER NO. 361

AN ACT CHANGING THE NAME OF THE INSTITUTIONS AT WARM SPRINGS AND GALEN TO THE MONTANA STATE HOSPITAL; CLARIFYING THE FUNCTIONS OF THE HOSPITAL; AND ELIMINATING THE JUVENILE RECEPTION AND EVALUATION CENTER; AMENDING SECTIONS 7-32-2144, 46-14-202, 46-14-213, 46-14-301 THROUGH 46-14-304, 46-19-202, 50-17-104, 53-1-104, 53-1-202, 53-1-402, 53-6-301 THROUGH 53-6-304, 53-20-214, 53-21-102, 53-21-202, 53-21-203, 53-21-401, 53-21-402, 53-21-411, 53-21-412, AND 53-30-211, MCA; REPEALING SECTIONS 53-21-301, 53-21-302, AND 53-30-201, MCA; AND INSTRUCTING THE CODE COMMISSIONER TO MAKE PROPER CHANGES IN MATERIAL ENACTED BY THE 48TH LEGISLATURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2144, MCA, is amended to read:

"7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) A sheriff delivering prisoners at the state prison or a juvenile correctional facility or mentally ill persons at the *Montana* state hospital or other mental health facility receives actual expenses necessarily incurred in their transportation. The expenses include the expenses of the sheriff in going to and returning from the institution. The sheriff shall take vouchers for every item of expense. The amount of these expenses, as shown by the vouchers when presented by the sheriff, shall be audited and allowed by the attorney general or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in

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subsection (2). No other or further compensation may be received by sheriffs for such expenses.

(2) Unless otherwise provided, while in the discharge of his duties, both civil and criminal, the sheriff receives a mileage allowance as provided in 2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and feeding persons ordered by the court as provided in 2-18-501 through 2-18-503. The county is not liable for and the board of county commissioners may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for subsistence in cases where mileage is allowed under this section, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work."

Section 2. Section 46-14-202, MCA, is amended to read:

"46-14-202. Psychiatric examination of defendant. (1) If the defendant or his counsel files a written notice of his intent to rely on a mental disease or defect under 46-14-201 or raises the issue of his fitness to proceed, the court shall appoint at least one qualified psychiatrist or shall request the superintendent of *the Montana* state hospital to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect."

Section 3. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric testimony upon trial. (1) Upon the trial, any psychiatrist who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist was designated by the court or by the superintendent of *the Montana* state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense

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charged, and his opinion as to the ability of the defendant to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

Section 4. Section 46-14-301, MCA, is amended to read:

"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial shall be considered by the court in making its determination.

(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant committed to the custody of the superintendent of *the Montana* state hospital to be placed in an appropriate institution for custody, care, and treatment.

(3) A person committed to the custody of the superintendent shall have a hearing within 180 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The hearing shall be conducted by the court which ordered the commitment unless that court transfers jurisdiction to the third judicial district. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(4) According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the *Montana* state hospital to be placed in an appropriate institution for custody, care, and treatment."

Section 5. Section 46-14-302, MCA, is amended to read:

"46-14-302. Discharge or release upon motion of superintendent. (1) If the superintendent of *the Montana* state hospital believes that a person committed to his custody under 46-14-301 may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the county attorney of the county from which the defendant was committed.

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(2) The court shall then appoint at least two qualified psychiatrists to examine the person and to report their opinion as to his mental condition within 60 days or a longer period which the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings thereon, the court may have the person confined in any institution located near the place where the court sits which may hereafter be designated by the superintendent of *the Montana* state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (1) of this section and the testimony of the reporting psychiatrists which the court considers necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions which the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall then be discharged or released on conditions which the court determines to be necessary or shall be recommitted to the custody of the superintendent of *the Montana* state hospital, subject to discharge or release only in accordance with the procedures prescribed in this section and 46-14-303."

Section 6. Section 46-14-303, MCA, is amended to read:

"46-14-303. Application for discharge or release by committed person. A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon the application is the same as that prescribed above in the case of an application by the superintendent of *the Montana* state hospital. However, an application by a committed person need not be considered until he has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person shall not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for his release or discharge."

Section 7. Section 46-14-304, MCA, is amended to read:

"46-14-304. Recommitment after conditional release. If within 5 years after the conditional release of a committed person the court determines after hearing evidence that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the superintendent of *the Montana* state hospital, subject to discharge or release only in accordance with the procedures prescribed in 46-14-302 and 46-14-303."

Section 8. Section 46-19-202, MCA, is amended to read:

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"46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the sheriff must execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of *the Montana* state hospital to be placed in an appropriate institution of the department of institutions for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of *the Montana* state hospital, the county prosecuting officer, or the defendant or his legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the sheriff shall be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged."

Section 9. Section 50-17-104, MCA, is amended to read:

"50-17-104. Facilities for diagnosis and treatment of tuberculosis. (1) *The Montana* state hospital shall maintain facilities to carry out this chapter.

(2) The charge for care, treatment, and maintenance at *the Montana* state hospital shall be at the rate fixed by law."

Section 10. Section 53-1-104, MCA, is amended to read:

"53-1-104. Release of arsonist — notification of fire marshal bureau. (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the fire marshal bureau of the department of justice whenever such a person is admitted or released by it:

(a) *Montana* state hospital;

(b) State prison;

(c) Mountain View school;

(d) Pine Hills school;

(e) Swan River youth forest camp;

(f) Any county or city detention facility.

(2) The notification shall disclose:

(a) the name of the person;

(b) where the person is or will be located; and

(c) the type of fire the person was involved in."

Section 11. Section 53-1-202, MCA, is amended to read:

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"53-1-202. Institutions in department. (1) The following institutions are in the department:

(a) *Montana* state hospital;

(b) Montana veterans' home;

(c) State prison;

(d) Mountain View school;

(e) Pine Hills school;

(f) Boulder River school and hospital;

(g) Montana center for the aged;

(h) Swan River youth forest camp;

(i) Eastmont training center;

(j) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 12. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents subject to per diem and ancillary charges. The department shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

(1) *Montana* state hospital;

(2) Boulder River school and hospital;

(3) Montana veterans' home;

(4) Montana center for the aged; and

(5) Eastmont training center."

Section 13. Section 53-6-301, MCA, is amended to read:

"53-6-301. Location and primary function of hospital. (1) The *agency providing comprehensive health care services at* Galen *and Warm Springs, Montana,* is the *Montana* state hospital and as its primary function provides:

(a) care and treatment of mentally ill persons;

(b) diagnosis, care, evalution, treatment, referral, and rehabilitation of persons afflicted with chemical dependency;

(c) care and treatment of institutional residents or clients of the department's community and residential programs who require acute hospital care or nursing care;

(d) treatment of tuberculosis and silicosis (commonly called miner's consumption);

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(e) detoxification *of* those persons who seek relief from the *disabling effects of alcohol and other chemical substances; and*

(f) contingent upon space and funds, the treatment of pulmonary diseases and other medical or organic disorders.

(2) The campus facility at Warm Springs, Montana, is the component designated as the mental health facility, as defined in 53-21-102, of the department of institutions for the care and treatment of mentally ill persons.

(3) The designated campus facilities at Galen, Montana, are the components designated as the department's residential treatment facilities for those persons suffering from chemical dependency.

(4) The campus facility at Galen, Montana, licensed to provide acute hospital and intermediate nursing care, is the facility component designated for the care and treatment of the medical and organic disorders described in this section."

Section 14. Section 53-6-302, MCA, is amended to read:

"53-6-302. Qualifications of superintendent. The superintendent of *the Montana* state hospital shall be an individual with a minimum of 3 years' full-time hospital administration experience and who is either:

(1) a physician legally qualified to practice medicine in Montana; or

(2) a person with a master's degree in hospital administration, business, or in a health care- or human services-related field."

Section 15. Section 53-6-303, MCA, is amended to read:

"53-6-303. Transfer of patients from Galen to mental institution. A mentally retarded or mentally ill person residing at *the* Galen *campus facility of the Montana* state hospital may be transferred to the Warm Springs *campus facility of the Montana* state hospital, the Montana center for the aged, or the Boulder River school and hospital with the approval of the department of institutions if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists, 15 days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse or, if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer."

Section 16. Section 53-6-304, MCA, is amended to read:

"53-6-304. Alcoholic treatment center. (1) There is an alcoholic treatment center located at the *Montana* state hospital. The admittance and discharge procedures for alcoholics are the same as for ill persons.

(2) As used in this section:

(a) "alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which

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endangers the drinker's health, interpersonal relations, or economic functioning or to an extent which endangers the public health, welfare, or safety;

(b) an "alcoholic" is a person suffering from the illness of alcoholism.

(3) The alcoholic treatment center shall provide care, evaluation, treatment, referral, and rehabilitation to persons in Montana who are referred for the treatment of the illness of alcoholism or the complications thereof."

Section 17. Section 53-20-214, MCA, is amended to read:

"53-20-214. Certain transfers of funds authorized. Funds appropriated to the department of institutions, *Montana* state hospital, or Boulder River school and hospital may be transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of social and rehabilitation services for comprehensive developmental disability systems if residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation."

Section 18. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

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(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of mental health and certified by the department in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(13) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the *Montana* state hospital."

Section 19. Section 53-21-202, MCA, is amended to read:

"53-21-202. Duties of department. The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate preventive mental health activities of the statewide mental health programs, including but not limited to the implementation of mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. Such means shall be utilized to initiate and operate these services in cooperation with local agencies as established under this part.

(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill;

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(4) collect and disseminate information relating to mental health;

(5) prepare and maintain a comprehensive plan for the development of public mental health services in the state. The public mental health services shall include but not be limited to community comprehensive mental health centers, mental health clinics, traveling service units, and consultative and educational services.

(6) provide by regulations for the examination of persons who apply for examination or who are admitted either as inpatients or outpatients *to the Montana* state hospital or other public mental health facilities;

(7) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(8) establish standards for public mental health facilities; and

(9) evaluate performance of public mental health facilities in compliance with federal and state standards."

Section 20. Section 53-21-203, MCA, is amended to read:

"53-21-203. Departmental contracts with mental health corporations. (1) The department may enter into contracts with regional mental health corporations for the purposes of the prevention, diagnosis, and treatment of mental illness. Under rules adopted by the department, mental health corporations may be provided for directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or hospitals.

(2) State funds specifically appropriated for regional mental health service contracts shall not exceed 50% of the budget approved by the department. Furthermore, the department may establish a system whereby funds appropriated to the *Montana* state hospital for patient care may be transferred to the community mental health services used to implement this part. If the patient load at *the Montana* state hospital is reduced and these patients become patients of a community mental health service, a portion of the funds appropriated for *the Montana* state hospital may be used to supplement the regional budget. However, if those patients are returned to *the Montana* state hospital from the community mental health services, these funds may revert back to the *Montana* state hospital. The department shall establish rules to implement this provision."

Section 21. Section 53-21-401, MCA, is amended to read:

"53-21-401. Legislative intent. (1) It is the intent of the legislature that geriatric patients at *the Montana* state hospital and geriatric residents of the state who may in the future be placed at *the Montana* state hospital and who do not need intensive psychiatric care receive care and treatment in nursing homes located in community settings.

(2) It is the further intent of the legislature that nursing homes providing such care and treatment be located regionally so that the residents may be near their homes and families.

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(3) It is the further intent of the legislature that these nursing homes shall be located in communities with:

(a) a labor pool large enough to ensure adequate and qualified staffing;

(b) sufficient medical facilities and medical professionals to provide necessary medical services; and

(c) if possible, an institution or institutions of higher learning with educational programs in disciplines with relevance to the problems of aging."

Section 22. Section 53-21-402, MCA, is amended to read:

"**53-21-402. Powers and duties of department of institutions.** The department of institutions:

(1) shall contract with nonprofit corporations which demonstrate expertise in and the capability of providing rehabilitative and restorative programs for aged citizens for the operation and management of nursing homes established under this part;

(2) shall ensure that nursing homes established and operated under this part are in compliance with all applicable federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) shall provide that geriatric residents of *the Montana* state hospital have first priority for admission to nursing homes established under this part;

(5) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing and operating nursing homes under this part."

Section 23. Section 53-21-411, MCA, is amended to read:

"**53-21-411. Location and function of center.** The institution located at Lewistown is the Montana center for the aged. The primary function of the center is the care and treatment of persons who have been admitted to *the Montana* state hospital and subsequently transferred to the center."

Section 24. Section 53-21-412, MCA, is amended to read:

"**53-21-412. Transfer of patients between Montana state hospital and center.** With the approval of the department of institutions, the *Montana* state hospital may transfer a patient to the center or from the center to the state hospital. Unless a medical or psychiatric emergency exists, 15 days prior to the transfer the department shall notify the patient's parent, guardian, or spouse or, if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer."

Section 25. Section 53-30-211, MCA, is amended to read:

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"53-30-211. Transfer of child to other facility or institution — notice. (1) The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department.

(2) In the case of transfers of children in juvenile facilities to *the Montana* state hospital or Boulder River school and hospital and unless medical or psychiatric emergency exists, 15 days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer."

Section 26. **Repealer.** Sections 53-21-301, 53-21-302, and 53-30-201, MCA, are repealed.

Section 27. **Code commissioner instruction.** Whenever the term "Warm Springs state hospital" or "Galen state hospital" appears in any material enacted by the 48th legislature, whether in new or amended sections, the code commissioner is instructed to change such reference to "Montana state hospital" and make such other incidental changes in grammar and punctuation as may be required.

Approved April 4, 1983.

CHAPTER NO. 362

AN ACT REVISING THE LAW RELATING TO UTILITY RATE SCHEDULE CHANGES; ALLOWING A UTILITY TO WAIVE THE 9-MONTH AUTOMATIC EFFECTIVE DATE OF A RATE SCHEDULE CHANGE; AND ALLOWING THE PUBLIC SERVICE COMMISSION TO DETERMINE THE INTEREST RATE TO BE PAID ON EXCESS REVENUES COLLECTED UNDER A RATE SCHEDULE SUBSEQUENTLY REDUCED BY THE PUBLIC SERVICE COMMISSION; AMENDING SECTION 69-3-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-302, MCA, is amended to read:

"69-3-302. Changes in schedules. (1) No change shall be made in any schedule, including schedules of joint rates, except as approved by the commission or upon the passage of 9 months. *If the 9-month time period expires prior to commission approval of a schedule, a utility may waive the time period.*

(2) Notwithstanding any provision of this title to the contrary and notwithstanding the existence of and authorization for the office of consumer counsel, the rates, tolls, or charges set forth in any schedule filed with the commission pursuant to 69-3-301 shall become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months after the

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date upon which the schedule was filed under the rules of practice and procedure for filing as adopted by the commission or upon commission approval, whichever shall occur first, *unless the utility waives the 9-month time period.* However, if the rates, tolls, or charges become effective because of the passage of 9 months' time, the revenues collected thereunder shall be subject to rebate, plus interest at *a per annum rate determined by the commission,* to the extent that the rates, tolls, or charges ultimately approved by the commission in its final decision produce revenues which are less than those collected under the filed schedules. *In the case of an investor-owned utility the interest rate set by the commission may not exceed the cost of equity capital as last determined by the commission.*

(3) The commission may prescribe rules necessary to effectively administer this section."

Approved April 4, 1983.

CHAPTER NO. 363

AN ACT TO CREATE A MONTANA YOUTH TREATMENT CENTER FOR THE CARE AND TREATMENT OF MENTALLY ILL YOUTHS BETWEEN THE AGES OF 12 AND 18 YEARS; AMENDING SECTIONS 41-5-207, 41-5-403, 41-5-523, 53-1-104, 53-1-202, 53-1-402, 53-21-112, 53-21-164, AND 53-30-211, MCA; REPEALING SECTION 53-30-201, MCA; AND PROVIDING AN APPLICABILITY SECTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Location and function of center.** There is a Montana youth treatment center located at Billings, Montana. The function of the center is the care and treatment of persons between the ages of 12 and 18 years who have been found to be seriously mentally ill and who have been appropriately evaluated and committed to the center.

Section 2. **No voluntary admissions — commitment provisions.** (1) There may be no voluntary admissions or commitments to the Montana youth treatment center. All admissions to the center must be by appropriate district court commitment, pursuant to the provisions of 53-21-114 through 53-21-127.

(2) The duration of the initial commitment to the treatment center is 3 months, and the commitment may be renewed or extended pursuant to the provisions of 53-21-128 for 6 months and then yearly thereafter.

(3) In addition to the determination by a district court that the individual is seriously mentally ill, as defined by 53-21-102, an individual may not be under 12 years of age or more than 18 years of age upon the date of his admission to the center.

Section 3. **No commitment to Warm Springs.** No one under 18 years of age may be voluntarily admitted or committed by a court to Warm Springs state hospital.

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Section 4. **Treatment of delinquent youth and youth in need of supervision.** (1) If the youth court, pursuant to 41-5-523, makes the determination that a delinquent youth or youth in need of supervision is in need of treatment at the Montana youth treatment center, the court must first determine, based on testimony of a mental health professional, whether or not the youth is also seriously mentally ill as defined in 53-21-102.

(2) Upon a finding of a serious mental illness, the court may commit a delinquent youth to the department of institutions until he is 21 years of age, unless sooner discharged, and may further indicate that it is the court's desire that the delinquent youth be placed at the Montana youth treatment center. Upon release or discharge from the facility, if the youth court order has not expired, the youth must be appropriately placed under the department of institutions for appropriate aftercare placement and supervision until expiration of the youth court order.

Section 5. **Rulemaking.** The department may adopt rules concerning the operation of the Montana youth treatment center and concerning the admission, treatment, and discharge of patients.

Section 6. Section 41-5-207, MCA, is amended to read:

"**41-5-207. Court costs and expenses.** *(1)* The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(a) the costs of medical and other examinations and treatment of a youth ordered by the court;

(b) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(c) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(d) reasonable compensation of a guardian ad litem appointed by the court; and

(e) cost of transcripts and printing briefs on appeal.

(2) If treatment pursuant to subsection (1)(a) is ordered to be given at the Montana youth treatment center, costs shall be subject to reimbursement pursuant to Title 53, chapter 1, part 4."

Section 7. Section 41-5-403, MCA, is amended to read:

"**41-5-403. Disposition permitted under informal adjustment.** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in a licensed foster home or other home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

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(d) transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place the youth in a state youth correctional facility, and such commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearing;

(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim, however the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If custody is given to the department of institutions under subsection (1)(d), the youth may not be committed to the Montana youth treatment center unless the commitment provisions of [section 2] are followed."

Section 8. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth, consistent with subsection (1)(d) of this section;

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for

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consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths, *except that if the evaluation is to be done at the Montana youth treatment center, the commitment provisions of [section 2] must be followed and no evaluation of a youth may be done at Warm Springs state hospital*; or

(b) in the case of a delinquent youth 16 years or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may consider advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b).

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(6) Except as provided in [section 4], if the custody of a youth is transferred to the department of institutions under subsection (1), the youth may not be committed to the Montana youth treatment center unless the commitment provisions of [section 2] are followed.

(7) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

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On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge"

Section 9. Section 53-1-104, MCA, is amended to read:

"**53-1-104. Release of arsonist — notification of fire marshal bureau.** (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the fire marshal bureau of the department of justice whenever such a person is admitted or released by it:

(a) Warm Springs state hospital;

(b) State prison;

(c) Mountain View school;

(d) Pine Hills school;

(e) Swan River youth forest camp;

(f) Any county or city detention facility; *or*

(g) Montana youth treatment center.

(2) The notification shall disclose:

(a) the name of the person;

(b) where the person is or will be located; and

(c) the type of fire the person was involved in."

Section 10. Section 53-1-202, MCA, is amended to read:

"**53-1-202. Institutions in department.** (1) The following institutions are in the department:

(a) Galen state hospital;

(b) Montana veterans' home;

(c) State prison;

(d) Mountain View school;

(e) Pine Hills school;

(f) Boulder River school and hospital;

(g) Warm Springs state hospital;

(h) Montana center for the aged;

(i) Swan River youth forest camp;

(j) Eastmont training center;

(k) Montana youth treatment center; and

(l) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 11. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents subject to per diem and ancillary charges. The department shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

(1) Warm Springs state hospital;

(2) Boulder River school and hospital;

(3) Galen state hospital;

(4) Montana veterans' home;

(5) Montana center for the aged;

(6) Eastmont training center; *and*

(7) Montana youth treatment center."

Section 12. Section 53-21-112, MCA, is amended to read:

"53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by a facility *that is not a state institution* or a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility *but not to the state hospital or the Montana youth treatment center.*

(3) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request

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as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor at the minor's request or at any time he is faced with potential legal proceedings.

(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the application for admission shall be treated as a petition for involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor."

Section 13. Section 53-21-164, MCA, is amended to read:

"**53-21-164. Treatment of children and young adults.** In addition to complying with all the other standards herein, *the Montana youth treatment center* shall make special provisions for the treatment of patients who are children and young adults. These provisions shall include but are not limited to:

(1) opportunities for publicly supported education suitable to the educational needs of the patient. This program of education must, in the opinion of the attending professional person, be compatible with the patient's mental condition and his treatment program and otherwise be in the patient's best interest.

(2) a treatment plan which considers the chronological, maturational, and developmental level of the patient;

(3) sufficient professional persons, teachers, and staff members with specialized skills in the care and treatment of children and young adults;

(4) recreation and play opportunities, in the open air where possible, and appropriate residential facilities separate, wherever possible, from older patients;

(5) arrangements for contact between the facility and the family of the patient."

Section 14. Section 53-30-211, MCA, is amended to read:

"**53-30-211. Transfer of child to other facility or institution — notice.** The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department. *However, except as provided for in 53-21-130, no youth may be transferred to the Montana youth treatment center without following the commitment procedures of [section 2].*"

Section 15. **Repealer.** Section 53-30-201, MCA, is repealed.

Section 16. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part

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of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Applicability.** This act shall apply 30 days after the governor declares that the Montana youth treatment center is ready for occupancy.

Approved April 4, 1983.

CHAPTER NO. 364

AN ACT TO AUTHORIZE AND PROVIDE FOR THE ISSUANCE, EXECUTION, AUTHENTICATION, AND TRANSFER OF PUBLIC OBLIGATIONS IN REGISTERED FORM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Congress has enacted the Tax Equity and Fiscal Responsibility Act of 1982 that requires, among other things, that all public obligations be issued in registered form if the interest earned on such obligations is to be exempt from the federal income tax; and

WHEREAS, Congress has extended from January 1, 1983, to July 1, 1983, the effective date of the Act insofar as it applies to the registration of public obligations for the purpose of allowing states, municipalities, and the commercial world to enact laws and ordinances and implement procedures to facilitate compliance with the law; and

WHEREAS, current Montana law does not provide for the issuance of most public obligations in a registered form; and

WHEREAS, the inability of the state, local governments, school districts, or other governmental entities to issue registered bonds results in an inability to issue public obligation bonds on which the interest earned is tax exempt; and

WHEREAS, the ability to finance public improvements through the issuance of tax-exempt bonds is critical to the conduct of the public business.

THEREFORE, it is the intent of the Legislature to authorize the state, local governments, school districts, and other governmental entities to issue in a registered form the public obligations they are now authorized to issue.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Model Public Obligations Registration Act of Montana".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

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(1) (a) "Authorized officer" means, with respect to any certificated public obligation:

(i) an individual whose signature to the certificated public obligation is required or permitted; or

(ii) an individual whom an authorized officer may, either alone or with the concurrence of another or others, permit to affix his signature to the certificated public obligation and who is so permitted in writing by the authorized officer with any required concurrence.

(b) "Authorized officer" means, with respect to any uncertificated public obligation, any individual referred to in this subsection as an authorized officer with respect to a certificated public obligation of the same class or series.

(2) "Certificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations.

(3) "Code" means the Internal Revenue Code of 1954, as amended.

(4) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of the issuer, official, or official body.

(5) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(6) "Financial intermediary" means a bank, broker, clearing corporation, or trust company or the nominee of any of them or other person or nominee which in the ordinary course of its business maintains public obligation accounts for its customers.

(7) "Issuer" means a public entity that:

(a) executes a certificated public obligation to evidence its duty to perform an obligation represented by the certificated public obligation;

(b) undertakes to perform an obligation that is an uncertificated public obligation; or

(c) becomes responsible for or in place of a public entity described as an issuer in this subsection.

(8) "Obligation" means an agreement of an issuer to pay principal and interest and includes a share, participation, or other interest in any such agreement.

(9) "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a public obligation.

(10) "Official or official body" means the officer or body that is empowered under the laws of one or more states, including this state, to provide

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for original issuance of a public obligation of the issuer by defining the obligation and its terms, conditions, and other incidents; the successor or successors of any such official or official body; and such other person or group of persons as are assigned duties of such official or official body under applicable law from time to time.

(11) "Original issuance" means the first transfer of a public obligation by an issuer to a purchaser.

(12) "Public entity" means any entity, department, or agency that is empowered under the laws of one or more states, including this state, to issue obligations, any interest with respect to which may under any provision of law be provided an exemption from the income tax referred to in the code. The term "public entity" may include this state, a political subdivision, a municipal corporation, a state university or college, a school district or other special district, a joint agreement entity, a public authority, a public trust, a nonprofit corporation, or other organization.

(13) "Public obligation" means either a certificated or an uncertificated public obligation.

(14) "System of registration" and its variants means a plan:

(a) with respect to a certificated public obligation, that provides that:

(i) the certificated public obligation specify a person entitled to the public obligation or the rights it represents; and

(ii) transfer of the certificated public obligation may be registered upon books maintained for that purpose by or on behalf of the issuer; and

(b) with respect to an uncertificated public obligation, that provides that transfer of the uncertificated public obligation be registered upon books maintained for that purpose by or on behalf of the issuer.

(15) "Uncertificated public obligation" means an obligation that is:

(a) issued pursuant to a system of registration;

(b) not represented by an instrument; and

(c) either one of a class or series or by its terms divisible into a class or series of obligations.

Section 3. **Declarations of state interest — purposes.** (1) Sections 103 and 103A of the code provide that interest with respect to certain obligations may not be exempt from the income tax if they are not in registered form. It is therefore a matter of state concern that public entities be authorized to provide for the issuance of obligations in such form. It is a purpose of [this act] to authorize all public entities to establish and maintain a system pursuant to which obligations may be issued in registered form within the meaning of sections 103 and 103A of the code.

(2) Obligations have traditionally been issued in bearer rather than in registered form, and a change from bearer to registered form will significantly affect the relationships, rights, and duties of issuers of and the persons that deal with obligations and, by such effect, the costs. Such effects

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will impact the various issuers and varieties of obligations differently, depending on their legal and financial characteristics, their markets, and their adaptability to recent and prospective technological and organizational developments. It is therefore a matter of state concern that public entities be provided flexibility in the development of systems of registration and control over system incidents, so as to accommodate differing impacts. It is a purpose of [this act] to provide for the establishment and maintenance, and amendment from time to time, of differing systems of registration of obligations, including system incidents, so as to accommodate the differing impacts upon issuers and varieties of obligations.

Section 4. **System of registration.** (1) Each issuer is authorized to establish and regularly maintain a system of registration with respect to each public obligation that it issues. The system may be either a system pursuant to which only certificated public obligations are issued or a system pursuant to which both certificated and uncertificated public obligations are issued. The issuer may discontinue and reinstitute either system from time to time.

(2) The system must be established and regularly maintained or amended, discontinued, or reinstituted for the issuer by the official or official body.

(3) The system must be described in the official actions that provide for original issuance and in subsequent official actions providing for amendments and other matters from time to time. Such description may be by reference to a program of the issuer that is established by the official or official body.

(4) The system must define the method or methods by which transfer of the public obligations is effective with respect to the issuer, which method or methods are exclusive (substantial compliance being essential to a valid transfer) and by which payment of principal and any interest must be made. The system may permit the issuance of public obligations in any denomination to represent several public obligations of smaller denominations. The system may also provide for the form of any certificated public obligations, for differing record and payment dates, for varying denominations, and for accounting, canceled certificate destruction, and other incidental matters.

(5) Under a system pursuant to which both certificated and uncertificated public obligations are issued, both types of public obligations may be regularly issued or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners. Under a system pursuant to which uncertificated public obligations are regularly issued provisions may be made for registration of pledges and releases.

(6) The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions and the effect of such on the exemption of interest from the income tax provided for by the code.

(7) If the effect of a conversion from one of the forms of public obligations provided for in [this act] to a form not provided for in [this act] is

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that interest will continue to be exempt from the income tax provided for by the code, [this act] does not preclude such conversion.

(8) To the extent not inconsistent with [this act], the rights provided by other laws with respect to obligations in other forms must be provided with respect to obligations in forms that may be used under [this act].

Section 5. **Certificated public obligation — execution — authentication.** (1) A certificated public obligation must be executed by the issuer by:

(a) the signing by an authorized officer with the manual signature of such officer; or

(b) the signing by such officer with a facsimile signature in lieu of the manual signature of such officer.

(2) Each certificated public obligation may, in addition to the signature or signatures of an authorized officer or officers, have placed upon it a certificate or certificates as authenticating trustee, registrar, transfer agent, or the like. Such certificate may be signed by the manual signature of an individual or by a facsimile signature in lieu of a manual signature, provided that at least one certificate is signed by a manual signature.

(3) The certificated public obligation must bear the manual signature of either:

(a) an authorized officer as defined in [section 2]; or

(b) a person described in subsection (2).

Section 6. **Certificated public obligation — signatures.** (1) No certificated public obligation signed by the authorized officers at the time of the signing is invalid or without binding effect even though before the issuance thereof any or all of such officers have ceased to fill their respective offices.

(2) Any authorized officer employed to sign any certificated public obligation may adopt as and for the signature of the officer the signature of a predecessor in office in the event that such predecessor's signature appears on such certificated public obligation.

Section 7. **Certificated public obligation — seal.** When a seal is required or permitted in the execution of any certificated public obligation, an authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

Section 8. **Uncertificated public obligation — signed statements.** The issuer shall provide, with respect to its uncertificated public obligations, for the sending of written statements that provide a record of certain rights as of the time of issuance of the statements. The statements must be sent to each person acquiring rights by registration in uncertificated public obligations, and the statements so sent must be signed by an authorized officer or by a person whose signature is required or permitted to be placed on a certificated public obligation of the same

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class or series. Statements, as such, confer no right on the recipient. Statements are neither a negotiable instrument nor a security.

Section 9. **Agents — depositories.** (1) An issuer may appoint for a term as may be agreed, including for so long as a public obligation may be outstanding, corporate or other authenticating trustees, transfer agents, registrars, or paying or other agents and specify their rights, compensation, and duties, limit their liabilities, and provide for their payment of liquidated damages in the event of breach of certain of the duties imposed, which liquidated damages may be made payable to a financial intermediary. No trustee, transfer agent, registrar, paying or other agent need have an office or do business within this state.

(2) An issuer may enter into agreements with custodian banks and financial intermediaries, and nominees of any of them, in connection with the establishment and maintenance by others of a central depository system for the transfer or pledge of public obligations. The custodian banks, financial intermediaries, and nominees may, if qualified and acting as fiduciaries, also serve as authenticating trustees, transfer agents, registrars, or paying or other agents of the issuer with respect to the same issue of public obligations.

Section 10. **Costs — collection.** (1) An issuer, prior to or at original issuance, may provide as a part of a system of registration that the transferor or transferee of the public obligations pay all or a designated part of the costs of the system, that costs be paid out of the proceeds of the public obligations, or that both methods be used. The portion of the costs of the system not provided to be paid by the transferor or transferee or out of proceeds is the liability of the issuer.

(2) The issuer may as a part of the system provide for reimbursement or for satisfaction of its liability by payment by others. The issuer may enter into agreements with others respecting reimbursement or payment, may establish fees and charges pursuant to such agreements or otherwise, and may provide that the amount or estimated amount of the fees and charges must be reimbursed or paid from the same sources and by means of the same collection and enforcement procedures and with the same priority and effect as with respect to the obligation.

Section 11. **Deposits for security.** Whenever under any law of this state a deposit of public obligations is authorized as security, public obligations otherwise meeting the authorized criteria may be deposited and must be accepted as security, provided that in the case of a certificated public obligation, the instrument is assigned to the holder of the deposit and in the case of an uncertificated public obligation, registration of a pledge is authorized by the system and the pledge of the uncertificated obligation is registered.

Section 12. **Public records — locations.** (1) With regard to the ownership or pledge of public obligations, records are not subject to inspection or copying under any law of this state relating to the right of the public to inspect or copy public records.

(2) Registration records of the issuer may be maintained at locations inside or outside this state determined by the issuer.

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Section 13. **Applicability — election — rescission.** (1) Public obligations may be issued as certificated or uncertificated public obligations as provided in [this act], notwithstanding provisions of law providing for issuance in other forms. Whenever bonds are issued under [this act], the provisions of [this act] are alternative and supplemental to such other provisions.

(2) Nothing in [this act] limits or prevents the issuance of obligations in any other form or manner authorized by law.

(3) The provisions of [this act] may be applied to obligations that have previously been approved by vote, referendum, or hearing, authorizing or permitting the authorization of obligations in bearer and registered form or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum, or hearing for the purpose of authorizing or permitting the authorization of obligations in registered form only.

Section 14. **Construction.** [This act] must be construed in conjunction with the Uniform Commercial Code and the principles of contract law relative to the registration and transfer of obligations.

Section 15. **Effective date.** This act is effective July 1, 1983.

Approved April 4, 1983.

CHAPTER NO. 365

AN ACT GIVING THE DEPARTMENT OF INSTITUTIONS THE AUTHORITY TO PREPARE A COMPREHENSIVE LONG-TERM STATE CHEMICAL DEPENDENCY PLAN TO BE UPDATED EACH BIENNIUM; REQUIRING COUNTIES TO PREPARE A COMPREHENSIVE LONG-TERM CHEMICAL DEPENDENCY PLAN EVERY 4 YEARS AND PROVIDE ANNUAL UPDATES; AND GIVING RULEMAKING AUTHORITY TO THE DEPARTMENT TO SET SUBMISSION DATES FOR COUNTY PLANS AND UPDATES; AMENDING SECTIONS 53-24-204 AND 53-24-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-204, MCA, is amended to read:

"**53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

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(b) prepare *a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium. These updates or any part thereof may be included in the department's report to the legislature*;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to alcoholics;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of alcoholism and drug dependence counselors;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services; and

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for alcoholics and intoxicated persons in or on parole from penal institutions."

Section 2. Section 53-24-211, MCA, is amended to read:

"53-24-211. County plan to be submitted to department. (1) *Every 4 years* each county *shall* submit to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of alcoholism. *Each county shall also submit annual plan updates that include, at a minimum, allocation to approved programs of revenues generated by taxation on alcoholic beverages.*

(2) The plan must have been approved by the board of county commissioners and must contain information regarding existing *private and public chemical dependency* programs within the county. The plan must also contain information regarding the current and future needs of the county for the treatment, rehabilitation, and prevention of alcoholism.

(3) The department shall approve or disapprove the countywide plan *and annual updates*. If the department disapproves a plan *or update*, the county may submit another plan *or update* to the department. In distributing funds to approved programs in a county, the department shall give consideration to the county plan.

(4) The department may adopt rules regarding the submission, *submission dates, updates*, approval, and disapproval of plans. *No money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of chemical dependency if the county does not comply with these rules.*"

Approved April 4, 1983.

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CHAPTER NO. 366

AN ACT REVISING THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT TO REQUIRE THE BONDING OF ALL RESTAURANTS, BARS, AND TAVERNS; ALLOWING THE COMMISSIONER OF LABOR AND INDUSTRY TO WAIVE THE BONDING REQUIREMENT; PROVIDING A GRANDFATHER CLAUSE; AMENDING SECTIONS 39-3-602 THROUGH 39-3-605, 39-3-607, AND 39-3-608, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-602, MCA, is amended to read:

"39-3-602. Purpose. The purpose of this part is to protect the state of Montana and employees of *persons operating businesses* as restaurants, bars, and taverns; to assure the payment of wages to such employees in the event the *person* ceases operation of his business and is unable to pay the wages due and owing to his employees; and to assure the payment of payroll taxes to the department."

Section 2. Section 39-3-603, MCA, is amended to read:

"39-3-603. Definitions. For the purposes of this part, the words and phrases used herein have the following meaning:

(1) "Bar" or "tavern" means a house where liquor or beer is sold to be drunk on the premises.

(2) "Beer" means any beverage so defined in the Montana Alcoholic Beverages Code.

(3) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "Employee" means a person who works for wages or salary in the service of an employer.

(7) "Liquor" means any beverage so defined in the Montana Alcoholic Beverages Code.

(8) "Person" includes any establishment, firm, partnership, corporation, person, or association of persons.

(9) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises."

Section 3. Section 39-3-604, MCA, is amended to read:

"39-3-604. Bond to be filed — bond requirements. (1) Every person *operating* a business as a restaurant, bar, or tavern is hereby

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required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom is grounds for enjoining the *operation* of business, as provided for in 39-3-607, until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided.

(2) The bond required by subsection (1) of this section shall be filed with the commissioner. The state of Montana shall be named as the obligee therein, with good and sufficient sureties to be approved by the attorney general.

(3) Such bond shall be conditioned to assure that the *employees* who perform labor or other personal services are guaranteed their wages in the event the *person* ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the *department* as a result of payroll taxes.

(4) Except as provided in 39-3-605(2), this section does not apply to any person who has operated the same restaurant, bar, or tavern continuously since October 1, 1980."

Section 4. Section 39-3-605, MCA, is amended to read:

"**39-3-605. Waiver of bond — new or additional bond.** *(1) After 3 years of compliance with this part, the commissioner shall waive the provisions of 39-3-604 for any person showing compliance with the applicable provisions of the Fair Labor Standards Act and all the applicable laws administered by the department.*

(2) Notwithstanding 39-3-604(4) and subsection (1) of this section, the commissioner may require *a person operating a restaurant, bar, or tavern, including a person who has been in business since October 1, 1980, or for over 3 years, to file* a new bond or a bond of a greater amount than double the semimonthly payroll whenever the *person operating a restaurant, bar, or tavern defaults on the payment of wages, payroll taxes, or workers' compensation premiums.*"

Section 5. Section 39-3-607, MCA, is amended to read:

"**39-3-607. Enjoining business until bond filed.** If any person *operates a* restaurant, bar, or tavern business without having first filed a bond as required by 39-3-604 *or by 39-3-605*, the attorney general, the commissioner, or any citizen, group of citizens, or any association in the county where the violator *operates* his business may institute an action to enjoin such person from *operating* the business until compliance with this part has been met."

Section 6. Section 39-3-608, MCA, is amended to read:

"**39-3-608. Unlawful to operate business without bond.** From and after *October 1, 1983*, it shall be unlawful for any person to *operate*

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a restaurant, bar, or tavern business without first having filed with the commissioner a bond in accordance with the requirements of 39-3-604 *or 39-3-605.*"

Approved April 4, 1983.

CHAPTER NO. 367

AN ACT AMENDING SECTION 7-5-2145, MCA, TO PROVIDE FOR PAYMENT OF EXPENSES OF COUNTY ASSESSORS ATTENDING MEETINGS AND CONVENTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2145, MCA, is amended to read:

"7-5-2145. Attendance at meetings and conventions by county officers and employees. (1) Unless otherwise provided by law, no county officer or employee may receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance at such convention, meeting, or other gathering as the officer or employee may by virtue of his office find it necessary to attend.

(2) Three members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance at any general meeting of county commissioners or assessors held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall also be paid.

(3) County attorneys, sheriffs, *assessors,* and justices of the peace may attend their respective meetings or conventions held within the state and are allowed actual traveling expenses, not more often than once a year, for attending the same.

(4) Any county officer paid on a per-day basis for his performance of official duties is allowed his per-day rate of pay for attendance at any convention, meeting, or other gathering of public officers that the officer may by virtue of his office find it necessary to attend."

Approved April 4, 1983.

CHAPTER NO. 368

AN ACT TO INCREASE THE FEES FOR EXAMINING CONSUMER LOAN BUSINESSES; AMENDING SECTION 32-5-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-403, MCA, is amended to read:

"32-5-403. Annual examinations — cost. (1) The department shall make an annual examination of the books, accounts, and records of

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every licensee insofar as they relate to transactions with borrowers under this chapter and may make such additional examinations as the department deems necessary.

(2) The expenses of the department incurred in the examination of the books and records of the licensees shall be charged at the rate of *$200* per *person* per day required to conduct the examinations of the respective licensees. Each licensee shall be billed by the department for the amount so charged to such licensee. If said charge is not paid within 30 days after the mailing of such bill, the license of said licensee may be suspended or revoked."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 4, 1983.

CHAPTER NO. 369

AN ACT TO LIMIT THE USE OF MONEY ACCRUED TO THE UNEMPLOYMENT INSURANCE TRUST FUND FROM INTEREST AND PENALTIES ON PAST-DUE CONTRIBUTIONS; AMENDING SECTIONS 39-51-406 AND 39-51-1301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-406, MCA, is amended to read:

"39-51-406. Unemployment insurance administration account. (1) There is hereby created an account in the federal and private revenue fund to be known as the unemployment insurance administration account. All moneys which are deposited, appropriated, or paid into this account are hereby appropriated and made available to the department. All moneys in the account shall be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of such other legislation as shall be specifically delegated to the department for administration by the legislature.

(2) All moneys received and deposited in said account for administration expense from the United States or any agency thereof pursuant to section 302, Title III of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account shall consist of:

(a) all moneys received from the United States or any agency thereof pursuant to section 302, Title III of the Social Security Act, as amended;

(b) all moneys appropriated by the state from the general fund for the purpose of administering this chapter; and

(c) all moneys, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency thereof;

(ii) this state or any agency thereof;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 shall remain part of the unemployment insurance account and shall be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. Any balance in this account shall not lapse at any time, but shall be continuously available to the department for the expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment insurance account under 39-51-402 shall be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code shall be taken to mean the unemployment insurance administration account in the federal and private revenue fund."

Section 2. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due contributions — use. (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater, and shall bear interest at the rate of 1% per month.

(2) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(3) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(4) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Approved April 4, 1983.

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CHAPTER NO. 370

AN ACT TO PROVIDE THAT THOSE LOCAL GOVERNMENT ENTITIES WHICH FAILED TO CORRECTLY ANTICIPATE MOTOR VEHICLE FEES AND STATE PAYMENTS IN LIEU OF TAXES IN THEIR 1982-83 BUDGETS SHALL REFUND OR CREDIT WITH INTEREST THE RESULTING PROPERTY TAX OVERCHARGES AND PROVIDE REVISED TAX NOTICES IN ACCORDANCE WITH THE OPTION CHOSEN; REQUIRING A REDISTRIBUTION OF TAXES AND FEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Refund of overpayment of 1982 property taxes.** (1) Counties, municipalities, and school districts that failed to correctly anticipate the receipt of nontax revenues in the form of motor vehicle fees and state payments in lieu of taxes, as distributed under 61-3-509, for the 1982-83 budget year shall recalculate property tax mill levies to reflect anticipation of such revenues for a 12-month period. The recalculated property tax levies resulting from such revisions must be used to determine the property tax overcharges that resulted from the failure to correctly anticipate the receipt of nontax revenues. The appropriate nontax revenue for the 1982-83 budget year includes 12 months of motor vehicle fee collections and one state payment in lieu of property taxes.

(2) The county treasurer shall estimate and inform each taxing jurisdiction of the amount of motor vehicle fees and state payments in lieu of taxes that should have been anticipated in each fund for each taxing jurisdiction. Each taxing jurisdiction shall recalculate levies by crediting the anticipated revenues directly to the revenue section of the budget and not to the cash reserves and provide the revised property tax levies to the county treasurer. The governing body of a county shall establish a refund procedure for the tax overcharge that resulted from the failure to correctly anticipate the revenues as stated in subsection (1). The refund procedure may provide for a reduction of the 1982 first-half property taxes remaining unpaid, a direct refund, a reduction of second-half property taxes, or some combination of these methods or establishment of a credit against 1983 property taxes, but must be common for all taxing jurisdictions in the county. In no case shall refunds be made to delinquent taxpayers. Direct refunds must be made by June 30, 1983. Notices of revised second-half property taxes must be mailed by May 1, 1983. The governing body of a county is granted the authority to establish the refund procedure for all taxing jurisdictions within the county. A taxing jurisdiction whose funds are not held by the county shall deposit with the county sufficient funds to make any necessary direct refunds for the tax overcharge by that taxing jurisdiction, or the county shall withhold such amount from allocations of future tax collections. The allowable credit against 1983 taxes must be clearly identified within the local government entity's fiscal 1983-84 budget, and the amount credited to each taxpayer must be indicated on the tax notice. A credit program must include the amount of excess tax plus

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interest computed at the average rate of interest earned by the county on long- and short-term investments from January through July 1983. A taxpayer who paid taxes for 1982 in full and who owes no tax for 1983 must be offered a cash refund in lieu of a credit against taxes.

(3) A copy of the calculation of anticipated vehicle fees and state payments in lieu of taxes and a copy of the revised mill levies on which refunds or reduced second-half payments are calculated must be mailed to the legislative auditor, the office of public instruction, and the department of administration.

(4) In addition to the determination of tax overcharges, the county treasurer shall, based upon the recalculated property tax levies, recalculate the disposition of taxes and fees pursuant to 61-3-509 and state aid received under 61-3-536 collected as of January 1, 1983, and increase or decrease the amount of motor vehicle fees in lieu of tax and state aid and personal property tax distributed to the several taxing jurisdictions in the county. All references or comparisons to 1982 mill levies by any taxing jurisdiction must be to the recalculated mill levies.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 5, 1983.

CHAPTER NO. 371

AN ACT TO ADOPT THE REVISED UNIFORM PRINCIPAL AND INCOME ACT AS PROMULGATED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS; AMENDING SECTIONS 72-25-101 THROUGH 72-25-103 AND 72-25-105, MCA; REPEALING SECTIONS 72-25-104, 72-25-201 THROUGH 72-25-209, 72-25-301, AND 72-25-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-25-101, MCA, is amended to read:

"72-25-101. Short title. This chapter may be cited as the "*Revised* Uniform Principal and Income Act"."

Section 2. Section 72-25-102, MCA, is amended to read:

"72-25-102. Definitions. In this chapter, the following definitions apply:

(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the adjusted basis for federal income tax purposes.

(3) "Remainderman" means the person entitled to the principal, *including income which has been accumulated and added to principal.*

(4) "Trustee" *means* the original trustee, any succeeding or added trustee, *and the personal representative of a decedent's estate whenever a provision of this chapter is applicable to the estate.*"

Section 3. Section 72-25-103, MCA, is amended to read:

"**72-25-103. Applicability.** *Except as specifically provided in the trust instrument or the will or in this chapter, this chapter applies to any receipt or expense received or incurred after July 1, 1983, by any trust or decedent's estate, whether established before or after July 1, 1983, and whether the asset involved was acquired by the trustee of a trust or a personal representative of a decedent's estate before or after July 1, 1983.*"

Section 4. Section 72-25-105, MCA, is amended to read:

"**72-25-105. Interpretation — uniformity.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it."

Section 5. **Duty of trustee as to receipt and expenditure.** (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this chapter;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this chapter; or

(c) if neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal and in view of the manner in which men of ordinary prudence, discretion, and judgment would act in the management of their own affairs.

(2) If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to a provision of this chapter.

Section 6. **Income — principal — charges.** (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in [section 10] on bond premium and bond discount;

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(c) income earned during administration of a decedent's estate as provided in [section 8];

(d) corporate distributions as provided in [section 9];

(e) accrued increment on bonds or other obligations issued at discount as provided in [section 10];

(f) receipts from business and farming operations as provided in [section 11];

(g) receipts from disposition of natural resources as provided in [sections 12 and 13];

(h) receipts from other principal subject to depletion as provided in [section 14].

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust, eventually to be delivered to a remainderman, while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

(a) consideration received by the trustee on the sale or other transfer of principal, or on repayment of a loan, or as a refund or replacement or change in the form of principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal, except proceeds of insurance upon a separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in [section 9];

(e) receipts from the disposition of corporate securities as provided in [section 10];

(f) royalties and other receipts from disposition of natural resources as provided in [sections 12 and 13];

(g) receipts from other principal subject to depletion as provided in [section 14];

(h) any profit resulting from any change in the form of principal;

(i) any allowances for depreciation established under [section 15(1)(b)].

(3) After determining income and principal in accordance with the terms of the trust instrument or of this chapter, the trustee shall charge to income or principal expenses and other charges as provided in [section 15].

Section 7. **When right to income arises — apportionment of income.** (1) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject

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to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

(2) In the administration of a decedent's estate or an asset becoming subject to a trust by reason of a will:

(a) receipts due but not paid at the date of death of the testator are principal;

(b) receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

(3) In all other cases, any receipt from an income-producing asset is income, even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of termination;

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

Section 8. **Income earned during administration of a decedent's estate.** (1) Unless the will otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under this chapter and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

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(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value.

(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

Section 9. **Corporate distributions.** (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership, and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other plan by which assets of the corporation are required by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1) through (3), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this chapter concerning the source or character of dividends or distributions of corporate assets.

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Section 10. **Bond premium and discount.** (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. No provision may be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

Section 11. **Business and farming operations.** (1) If a trustee uses any part of the principal in the continuance of a business of which the settlor was a sole proprietor or a partner, the net profits of the business, computed in accordance with generally accepted accounting principles for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Generally accepted accounting principles shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

Section 12. **Disposition of natural resources.** (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsection (1)(a) or (1)(b) shall be apportioned on a yearly basis in accordance with subsection (1)(c), whether or not any natural resource was being taken from the land at the time the trust was established. Not less than 20% or more than 50% of the net receipts, to be determined in the discretion of the trustee, shall be

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added to principal as an allowance for depletion. The balance of the net receipts is income.

(2) If a trustee, on July 1, 1983, held an item of depletable property of a type specified in this section, he shall allocate receipts from the property in the manner used before July 1, 1983, but as to all depletable property acquired after July 1, 1983, by an existing or new trust, the method of allocation provided in this section shall be used.

(3) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

Section 13. **Timber.** If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with [section 5(1)(c)].

Section 14. **Other property subject to depletion.** Except as provided in [sections 12 and 13], if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of 5% per year of the net receipts remaining after payment of expenses, directly and indirectly computed without allowance for depletion, are income, and the balance is principal.

Section 15. **Charges against income and principal.** (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal; water rates; premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee; interest paid by the trustee; and ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation of that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on July 1, 1983, for which the trustee is not then making an allowance for depreciation;

(c) not less than one-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney fees, and fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) not less than one-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, unless the court directs otherwise;

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(f) any tax levied upon receipts defined as income under this chapter or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may, by means of reserves or other reasonable means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) The following charges shall be made against principal:

(a) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e); special compensation of trustees; expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including the cost of investing and reinvesting principal; the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal; expenses for preparation of property for rental or sale; and, unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by subsection (1)(b) and by [section 11];

(d) any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority;

(e) if an estate or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under [section 7].

Section 16. **Repealer.** Sections 72-25-104, 72-25-201 through 72-25-209, 72-25-301, and 72-25-302, MCA, are repealed.

Section 17. **Codification instruction.** Sections 5 through 15 are intended to be codified as an integral part of Title 72, chapter 25, and the provisions of Title 72, chapter 25, apply to sections 5 through 15.

Section 18. **Effective date.** This act is effective July 1, 1983.

Approved April 5, 1983.

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CHAPTER NO. 372

AN ACT PROVIDING THAT A TAX LEVY FOR THE FIREFIGHTERS' DISABILITY AND PENSION FUND IMPOSED BY A THIRD-CLASS CITY OR TOWN MUST BE MADE IN ADDITION TO THE ALL-PURPOSE MILL LEVY; AMENDING SECTIONS 7-6-4453 AND 19-11-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-4453, MCA, is amended to read:

"7-6-4453. Certain special mill levies also available. (1) The all-purpose mill levy shall not and may not include the levies imposed for bonded indebtedness, to pay judgments, or for special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy, as provided in subsection (2). Sections 7-6-4451 through 7-6-4455 shall not be construed as repealing those statutes providing for multiple separate levies.

(2) Extraordinary levies otherwise authorized to pay for bonded indebtedness, judgments, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided in 7-6-4451 through 7-6-4455.

(3) In a third-class city or town, the all-purpose mill levy may not include the special tax levy for the firefighters' disability and pension fund provided for in 19-11-503. This special tax levy must be made in addition to the all-purpose mill levy."

Section 2. Section 19-11-503, MCA, is amended to read:

"19-11-503. Special tax levy for fund required. (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to 3% of the taxable valuation of all taxable property within the limits of the city or town.

(2) Whenever the fund contains less than 3% of the taxable valuation of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in 19-11-504. The special tax shall be collected as other taxes are collected and, when so collected, shall be paid into the disability and pension fund.

(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 5, 1983.

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CHAPTER NO. 373

AN ACT TRANSFERRING THE DUTY TO EXAMINE ARTICLES OF INCORPORATION OF PROPOSED DOMESTIC INSURERS FROM THE ATTORNEY GENERAL TO THE STATE COMMISSIONER OF INSURANCE; AMENDING SECTION 33-3-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-3-202, MCA, is amended to read:

"**33-3-202. Articles of incorporation — filing and approval.** (1) The incorporators of a proposed domestic insurer shall deliver the quadruplicate originals of the articles of incorporation to the commissioner together with the filing fees therefor specified in 33-2-708. The commissioner shall *examine* the proposed articles of incorporation. If the *commissioner* finds that the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, he shall endorse his approval upon each set of the articles, except that if the commissioner finds that the proposed insurer would not be eligible for a certificate of authority under 33-2-112, he shall refuse to approve the articles of incorporation and shall return them to the proposed incorporators together with a written statement of the reasons for such refusal. If approved by him, the commissioner shall then forward the articles of incorporation with his approval endorsed thereon to the incorporators. The incorporators shall forthwith file one set of the articles of incorporation with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, one set with the county clerk of the county wherein is to be located the corporation's principal place of business, and the remaining set of articles shall be made a part of the corporation's record.

(2) If the *commissioner* finds that the proposed articles of incorporation do not comply with law, he shall refuse to approve the same and shall return all sets of the proposed articles of incorporation to the proposed incorporators together with *a* written statement of the *reasons for his refusal to approve*

(3) The corporation shall have legal existence as such upon the issuance of the certificate of incorporation by the secretary of state and the completion of the filings referred to in subsection *(1)* above, but it shall not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this code.

(4) A copy of the certificate of incorporation, duly certified by the secretary of state, shall be admissible in all the courts of this state as prima facie evidence of due incorporation."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 5, 1983.

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CHAPTER NO. 374

AN ACT AUTHORIZING COUNTY WATER AND COUNTY SEWER DISTRICTS TO REGULATE UTILITIES THAT THEY OWN; PROVIDING THAT SUCH A DISTRICT IS SUBJECT TO THE SAME PROCEDURES AND LIMITS AS A MUNICIPALITY REGULATING A MUNICIPALLY OWNED UTILITY; AMENDING SECTION 7-13-2301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Regulation of rates by county water and county sewer districts.** (1) A county water district or a county sewer district formed under the provisions of Title 7, chapter 13, part 22 or 23, may impose, as it considers proper, rates, charges, and classifications for utility services to the residents of the district and other persons served by its utility system.

(2) In exercising its regulatory authority a county water or a county sewer district is granted the same authority and is bound by the same procedures and limitations as a municipality regulating a utility under the provisions of this chapter.

Section 2. Section 7-13-2301, MCA, is amended to read:

"**7-13-2301. Establishment of charges for services.** (1) *Subject to the provisions of [section 1], the* board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distribution of water to all users.

(2) The board in the furnishing of water, sewer service, other services, and facilities shall fix such rate, fee, toll, rent, or other charge as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due.

(3) Notwithstanding any other section of this part or part 22 or limitation imposed therein and when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of treatment services and works, the board may adopt a system of charges and rates to require that each recipient of treatment works services pays its proportionate share of the costs of operation, maintenance, and replacement and to require industrial users of treatment works to pay the portion of the cost of construction of the treatment works which is allocable to the treatment of that industrial user's wastes."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 69, chapter 7, and provisions of Title 69, chapter 7, apply to section 1.

Section 4. **Coordination instruction.** If Senate bill 436, introduced in the 48th Legislature, is passed and approved containing, as amendatory language in section 5 or any other section amending 69-3-101, an exclusion

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of county or consolidated city and county water or sewer districts as established under Title 7, chapter 13, parts 22 and 23, from the definition of public utility, then this act is void.

Approved April 5, 1983.

CHAPTER NO. 375

AN ACT TO ALLOW THE NUMBER OF HOURS WORKED BY FIREFIGHTERS TO BE THE SUBJECT OF COLLECTIVE BARGAINING; AMENDING SECTIONS 7-1-111, 7-33-4109, 39-3-406, AND 39-4-107, MCA; AND REPEALING SECTIONS 7-33-4126, 7-33-4129, AND 7-33-4132, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

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(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

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(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1); *or*

(n) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative."

Section 2. Section 39-4-107, MCA, is amended to read:

"**39-4-107. State and municipal governments, school districts, mines, mills, and smelters.** (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. In cases of emergency when life or property is in imminent danger this subsection does not apply.

(2) *The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.*

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less

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than $100 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment."

Section 3. Section 7-1-111, MCA, is amended to read:

"**7-1-111. Powers denied.** A local government unit with self-government powers is prohibited the exercise of the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation) *or* 7-33-4128, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power which it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of lands with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of natural resources and conservation with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute or which defines an offense as a felony or which fixes the penalty or sentence for a misdemeanor in excess of a fine of $500 or 6 months' imprisonment or both such fine and imprisonment, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that it has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 87 (fish and game) or Title 75, chapter 7, part 1."

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Section 4. Section 7-33-4109, MCA, is amended to read:

"7-33-4109. Supplementary volunteer fire department authorized for cities of second class. (1) In addition to a paid department, the city council, city commission, or other governing body in cities of the second class may make provision for a volunteer fire department.

(2) *The* city commission or governing department shall be exempted as to compliance with 7-33-4128 insofar as the same may pertain to the said volunteer fire department by way of penalties and infringements.

(3) A volunteer is one who is an enrolled member of the volunteer fire department and assists the paid fire department; who is eligible to serve only on the board of trustees of the fire department relief association of such city (provided not more than three volunteer members are on said board of trustees); but who shall not be entitled to receive a service pension.

(4) The governing body of said city may at its discretion pay an enrolled volunteer firefighter the minimum of $1 for attending a fire and a minimum of $1 for each hour or fraction of an hour after the first hour in active service at said fire or returning any or all equipment to its proper place.

(5) In the attending of fires, any volunteer shall act and serve under the supervision of the chief of the paid fire department."

Section 5. **Repealer.** Sections 7-33-4126, 7-33-4129, and 7-33-4132, MCA, are repealed.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 5, 1983.

CHAPTER NO. 376

AN ACT AMENDING THE MONTANA MEDICAL MALPRACTICE PANEL ACT BY CHANGING THE NAME OF THE ACT; CLARIFYING THE DEFINITIONS USED IN THE ACT; PROVIDING FOR A DIFFERENT ALLOCATION OF ASSESSMENTS; CHANGING THE TIME WITHIN WHICH AFFIDAVITS OF DISQUALIFICATION MAY BE FILED; PROVIDING FOR SERVICE BY CERTIFIED MAIL; INCREASING THE NUMBER OF PROPOSED PANELISTS INITIALLY SELECTED; DELETING THE PROHIBITION AGAINST THE USE OF IMPEACHING EVIDENCE IN COURT; AMENDING SECTIONS 27-6-101, 27-6-103, 27-6-104, 27-6-206, 27-6-305, 27-6-402, 27-6-404, AND 27-6-704, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-6-101, MCA, is amended to read:

"27-6-101. Short title. This chapter may be cited as the "Montana Medical *Legal* Panel Act"."

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Section 2. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Health care facility" means a facility (other than a university, college, or governmental hospital or infirmary) licensed as a health care facility under Title 50, chapter 5.

(2) "Health care provider" means a physician or *a health* care facility.

(3) "Hospital" means a hospital as defined in 50-5-101.

(4) "Malpractice claim" means any claim or potential claim against a health care provider for medical treatment, lack of medical treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the patient, whether the patient's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(5) "Panel" means the Montana medical *legal* panel provided for in 27-6-104.

(6) "Physician" means an individual licensed to practice medicine under the provisions of Title 37, chapter 3."

Section 3. Section 27-6-104, MCA, is amended to read:

"27-6-104. Creation of panel. The Montana medical *legal* panel is created. The panel is attached to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply."

Section 4. Section 27-6-206, MCA, is amended to read:

"27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers, *except physicians not engaged in the private practice of medicine. The amount of the assessment must be annually set by the director, who shall allocate a projected cost among physicians, hospitals, and other health care facilities. The amount of the assessment for an individual physician, hospital, or other health care facility must be that portion of the total assessment which bears the same relationship to the total assessment as the number of claims against such physician, hospital, or other health care facility bears to the total number of claims against physicians, hospitals, and other health care facilities that have been filed with the panel since April 19, 1977, as that total number of claims is shown in the annual reports of the panel. However, the assessment for an individual hospital must also be determined by dividing the total percentage of the assessment for all hospitals by the total number*

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of hospital beds existing at the time of the assessment and multiplying the result by the number of beds in the hospital to be assessed. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians' annual registration fees are due under 37-3-313. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 in connection with physicians' annual registration fees."

Section 5. Section 27-6-305, MCA, is amended to read:

"27-6-305. Service on health care provider. Upon receipt of an application for review, the director or his delegate shall cause to be served a true copy of the application on the health care providers involved. Service shall be effected *by mailing a certified copy of the application to the health care provider at the provider's last-known address, postage prepaid, by certified mail, return receipt requested.*"

Section 6. Section 27-6-402, MCA, is amended to read:

"27-6-402. Selection of panelists. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall, *within 14 days from the date of transmittal of the application,* each select *12 proposed* panelists *from which 3 will be selected.*

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select *12* persons from the health care provider's profession and, where applicable, from persons specializing in the same field or discipline as the health care provider."

Section 7. Section 27-6-404, MCA, is amended to read:

"27-6-404. Disqualification of panel member. (1) Any member shall disqualify himself from consideration of any case in which, by virtue of his circumstances, he feels his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(2) Whenever a party makes and files an affidavit that a panel member selected pursuant to this part cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association, state licensing board, or the state bar, as the case may be. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed *within 15 days of the transmittal by the director, under 27-6-402, of the names of the panel members selected.*"

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Section 8. Section 27-6-704, MCA, is amended to read:

"27-6-704. Panel proceedings and decision privileged from disclosure in court actions. (1) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) The decision of the medical review panel is not admissible as evidence in any action subsequently brought in any court of law."

Section 9. **Effective dates.** (1) Section 4 of this act is effective January 1, 1984.

(2) All other sections of this act are effective on passage and approval.

Approved April 5, 1983.

CHAPTER NO. 377

AN ACT EXCLUDING CERTAIN ROYALTIES FROM THE DEFINITION OF CONTRACT SALES PRICE OF COAL; AMENDING SECTION 15-35-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-102, MCA, is amended to read:

"15-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. *Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:*

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

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(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(2) "Department" means the department of revenue.

(3) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(4) "Produced" means severed from the earth.

(5) "Strip mining" or "surface mining" is defined in 82-4-203.

(6) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(7) "Ton" means 2,000 pounds.

(8) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 2. **Effective date.** This act is effective July 1, 1984.

Approved April 5, 1983.

CHAPTER NO. 378

AN ACT PROVIDING AN INCOME TAX DEDUCTION TO NONRESIDENTS FOR CONTRIBUTIONS MADE TO MONTANA OR A POLITICAL SUBDIVISION; AMENDING SECTION 15-30-131, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-131, MCA, is amended to read:

"15-30-131. Nonresident and temporary resident taxpayers — adjusted gross income — deductions. (1) In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department.

(2) In the case of a taxpayer other than a resident of this state who is a resident of a state that imposes a tax on the income of natural persons

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residing within that state, the deductions allowed in computing net income are restricted to those directly connected with the production of Montana income.

(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to the greater of those directly relating to the production of Montana income or a prorated amount of those allowed under 15-30-121. For the purposes of this subsection, deductions allowed under 15-30-121 apply only to earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.

(4) A temporary resident shall be allowed those deductions and the credit under 15-32-109 allowed a resident to the extent that such deductions or credit were actually incurred or expended in the state of Montana during the course of his residency.

(5) For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended.

(6) Notwithstanding the provisions of subsections (2) and (3), any contribution made after December 31, 1982, to the state of Montana or a political subdivision thereof shall be an allowable deduction in computing net income. The deduction is subject to the limitations set forth in section 170 of the Internal Revenue Code of 1954 as labeled or amended."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1982.

Approved April 5, 1983.

CHAPTER NO. 379

AN ACT TO GENERALLY AMEND AND CLARIFY THE LAWS RELATING TO JURY SELECTION; ELIMINATING THE REQUIREMENT FOR BALLOT CAPSULES; SPECIFYING THE DUTIES OF THE CLERK OF THE DISTRICT COURT; AND AMENDING EXEMPTIONS FROM JURY SERVICE; AMENDING SECTIONS 3-5-510, 3-5-511, 3-15-204, 3-15-312, 3-15-313, 3-15-501, 3-15-502, 3-15-505, 3-15-507, 7-33-2314, 7-33-2315, 25-7-202 THROUGH 25-7-204, 25-7-206, 25-7-208, 25-7-209, AND 46-17-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-510, MCA, is amended to read:

"**3-5-510. Duties relating to jurors and witnesses.** The clerk of the district court shall:

(1) keep a book called "Book of Jurors' *Warrants*", which must contain the blank *warrants* and *copies* as provided in 3-15-204;

(2) keep a "Witness Book", which must contain blank *warrants* and *copies* as provided in 3-5-511;

(3) keep a record of the attendance of all jurors and witnesses in criminal actions and compute the amount due them for mileage (the distance from any point to the county seat must be determined by the shortest traveled route)."

Section 2. Section 3-5-511, MCA, is amended to read:

"3-5-511. Procedure in reference to witnesses' warrants. (1) The witnesses in criminal actions must report their presence to the clerk the first day they attend under the subpoena.

(2) At the time any witness is excused from further attendance, the clerk must give to each witness a *warrant* taken from a book containing a *carbon copy of the same*, signed by the clerk, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due.

(3) On presentation of such *warrant* to the county treasurer, the amount specified in the *warrant* must be paid out of the general fund."

Section 3. Section 3-15-204, MCA, is amended to read:

"3-15-204. Duties of clerk as to jurors. (1) The clerk must keep a record of the attendance of jurors and compute the amount due for mileage. The distance from any point to the county seat must be determined by the shortest traveled route.

(2) The clerk must give to each juror, at the time he is excused from further service, a *warrant* signed by himself, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled, and the amount due.

(3) On presentation of such *warrant* to the county treasurer, the amount specified in the *warrant* must be paid out of the general fund.

(4) The clerk must make a detailed statement containing a list of the jurors and the amount of fees and mileage earned by each and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board. No quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct."

Section 4. Section 3-15-312, MCA, is amended to read:

"3-15-312. Discharge by court or jury commissioner. The court *or jury commissioner with the approval of the court* must discharge a person from serving as a trial juror in either of the following cases:

(1) when it satisfactorily appears that the person is not competent; or

(2) when it satisfactorily appears that the person should be excused under 3-15-313."

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Section 5. Section 3-15-313, MCA, is amended to read:

"3-15-313. Who may be excused — affidavit to claim excuse. (1) The court *or jury commissioner with the approval of the court* shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for him or the public served, he may make and transmit an affidavit to the *jury commissioner* for which he is summoned stating his occupation or such other facts as he believes will excuse him from jury service. The affidavit shall be filed with the *jury commissioner*, who shall transmit it to the court. The court *or jury commissioner with the approval of the court* may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1)."

Section 6. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned. (1) At least once each year in each county, when a civil or criminal case has been at issue and ready for trial for more than 6 months and the plaintiff or defendant in such case has requested a jury trial or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and no jury is in attendance, the court must make an order directing a trial jury to be drawn and summoned to attend before said court. Such order must specify the number of jurors to be drawn. *The* time at which the jurors are required to attend *must* be at the discretion of the court.

(2) The court may direct that such causes, either criminal or civil, in which a jury may be required or in which a jury may have been demanded be continued and fixed for trial when a jury shall be in attendance.

(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.

(4) The judge or judges of a district or the judge of a department may designate that jury service in his or their district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at such a trial.

(5) If the number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) or (4) may be required to serve."

Section 7. Section 3-15-502, MCA, is amended to read:

"3-15-502. Jury commissioner. The clerk of court is the jury commissioner, *and the commissioner may appoint a deputy pursuant to 7-4-2401.*"

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Section 8. Section 3-15-505, MCA, is amended to read:

"3-15-505. Notice to jurors. The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail *as to their qualifications to serve as trial jurors.* He may attach to the notice *a jury questionnaire and* a form for an affidavit claiming an excuse as provided for in 3-15-313. If a person fails to respond to the notice, the clerk shall certify the failure to the sheriff, who shall then serve notice personally on such person and require a response to the notice."

Section 9. Section 3-15-507, MCA, is amended to read:

"3-15-507. Clerk to call list of jurors summoned and prepare ballots. (1) At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and *not excused.*

(2) The names of the jurors present and not excused *must be written* on separate ballots *with* the names concealed. *The* clerk shall deposit the ballots in a box large enough to hold all of the *ballots* without crowding. The box shall be so arranged that the judge *or clerk* drawing the *ballots* from the box is unable to see the *ballots* he is about to draw."

Section 10. Section 7-33-2314, MCA, is amended to read:

"7-33-2314. Certain exemptions for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to the following privileges and exemptions:

(1) exemption from payment of poll tax, road tax, and head tax of every description;

(2) exemption from military duty except in case of war, invasion, or insurrection."

Section 11. Section 7-33-2315, MCA, is amended to read:

"7-33-2315. Certificate of membership in fire company. (1) Every firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must receive from the chief engineer of the department to which he belonged a certificate to that effect.

(2) (a) Every active firefighter must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs. Such certificates must be countersigned by the secretary and over the seal of the company if one is provided.

(b) In lieu of issuing certificates to exempt firefighters by the chief of the fire department, on the certificate of the foreman and secretary of any fire company or the chief of the department, provision being made therefor in the bylaws of the company, "exempt certificates" may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military duty.

(3) Each certificate entitles the holder to exemption from military duty. Every such certificate is prima facie evidence of the facts therein stated.

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(4) The secretary of the fire department or fire company must keep a record of all certificates of exemption or active membership, the date thereof and to whom issued, and, when no seal is provided, similar entries of certificates issued to obtain county clerk's certificates."

Section 12. Section 25-7-202, MCA, is amended to read:

"25-7-202. Judge or jury commissioner to draw ballots. When an issue of fact to be tried by a jury is brought to trial, the district judge *or jury commissioner* in the presence of *two witnesses* must openly draw out of the trial juror box as many of the ballots with the names of jurors thereon, one after another, as are sufficient to form a jury *for the cause to be tried. Upon stipulation of counsel, the court may order such jurors to be seated in the order drawn.*"

Section 13. Section 25-7-203, MCA, is amended to read:

"25-7-203. Drawing a new jury when another is impaneled. If an issue is brought to trial by a jury while a jury is impaneled in another cause and not then discharged, the court may order a jury for the trial of that issue to be drawn out of the box containing the *ballots* then undrawn; but in any other case the ballots with the names of all the trial jurors returned and attending the court must be placed together in the same box before a jury is drawn therefrom."

Section 14. Section 25-7-204, MCA, is amended to read:

"25-7-204. Mode of drawing ballots. Before the first ballot shall have been drawn, the box must be closed and well shaken so as to thoroughly mix the *ballots* therein. The district judge must draw *at random* a ballot with the juror's name thereon. *Upon stipulation of counsel, the court may order the clerk to draw ballots.*"

Section 15. Section 25-7-206, MCA, is amended to read:

"25-7-206. Procedure when insufficient number attend. (1) If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the *jury commissioner* shall, pursuant to an order *of the court* to be entered in the minutes, in the presence of *two witnesses*, draw a sufficient number of ballots from the box to complete the jury. The sheriff shall notify the persons thus drawn to attend immediately or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified under an order made as prescribed in this section, the court may make another order or successive orders until a sufficient number is obtained.

(2) Each person so notified must attend at the time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do so, he may be fined in the same manner as any other trial juror regularly drawn and notified. He is subject to the same exceptions and challenges as any other trial juror."

Section 16. Section 25-7-208, MCA, is amended to read:

"25-7-208. Ballots of jurors who have been sworn. The ballots with the names of the jurors so sworn must be then deposited in another

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box and there kept apart from the other ballots with the names of jurors until that jury is discharged. After the jury is discharged, the ballots with the names of the jurors thereon must be returned to the box from which they were first taken."

Section 17. Section 25-7-209, MCA, is amended to read:

"25-7-209. Ballots of jurors not sworn. The ballot with the name of a juror who is absent when his name is drawn or called or is set aside or excused from serving on that trial must be again returned to the box containing the undrawn *ballots* as soon as the jury is sworn."

Section 18. Section 46-17-202, MCA, is amended to read:

"46-17-202. Formation of trial jury. (1) At the time of preparing the district court jury list, the county *commissioners and clerk and recorder* shall prepare a jury list for each justice's and city court within the county. Each list shall consist of residents of the appropriate county, city, or town. The lists shall be selected in any reasonable manner which ensures fairness, and each shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists shall be filed in the office of the clerk of the district court. The appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as all of the defendants."

Approved April 5, 1983.

CHAPTER NO. 380

AN ACT REQUIRING A SEPARATE TAX ON CERTAIN LUMP-SUM DISTRIBUTION PAYMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Tax on lump-sum distributions.** (1) There is imposed a separate tax on lump-sum distributions.

(2) The tax is 10% of the amount of tax determined under section 402(e) of the Internal Revenue Code of 1954, as amended, or as section 402(e) may be renumbered or amended.

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(3) All means available for the administration and enforcement of income taxes shall be applied to the tax on lump-sum distributions.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to section 1.

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1982.

Approved April 5, 1983.

CHAPTER NO. 381

AN ACT ALLOWING ADOPTION OF A LOCAL OPTION MOTOR FUEL TAX BY REFERENDUM; AMENDING SECTION 7-14-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-301, MCA, is amended to read:

"**7-14-301. Local option motor fuel excise tax authorized.** (1) *A* motor fuel excise tax, in increments of 1 cent per gallon, not to exceed 2 cents per gallon upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads *may be imposed:*

(a) by the people of the county by initiative; or

(b) by the board of county commissioners by adoption of a resolution and referral to the people.

(2) The initiative *or referendum* must specify the tax is to be collected by the department of revenue.

(3) Such a motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of such an initiative *or referendum.*

(4) Every distributor shall pay the motor fuel excise tax to the agency specified in the initiative *or referendum* as provided in subsection (1). When the tax is collected by the department of revenue, each distributor shall render a monthly statement to the department of all gasoline distributed during the preceding calendar month in the county in which it is sold to the ultimate consumer and such other information as the department may reasonably require in order to administer the motor fuel excise tax.

(5) The information, recordkeeping, and examination of records provisions of Title 15, chapter 70, apply to this part.

(6) The department of revenue collecting the tax authorized under subsection (1) shall establish procedures to provide a refund to a person who

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has paid the excise tax but who can substantiate that the motor fuel was purchased for a use other than on public highways, streets, and roads.

(7) In this part, the terms "distributor", "gasoline", "import", "motor vehicle", "person", and "use" have the meanings ascribed to them in 15-70-201."

Approved April 5, 1983.

CHAPTER NO. 382

AN ACT TO CLARIFY THAT INTEREST EARNED ON THE DEPOSIT OF COUNTY AND MUNICIPAL IMPROVEMENT DISTRICT FUNDS AND INTEREST EARNED ON THE INVESTMENT OF BOND AND WARRANT PROCEEDS OF SUCH DISTRICTS ARE CREDITED TO THE DISTRICT'S FUND; AMENDING SECTIONS 7-12-2173, 7-12-2175, 7-12-4205, AND 7-12-4207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2175, MCA, is amended to read:

"7-12-2175. Investment of interest and sinking fund money. (1) The governing body of a county in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank insured by the federal deposit insurance corporation or in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on such deposits or investments shall be credited to the *sinking* fund from which the money was withdrawn."

Section 2. Section 7-12-2173, MCA, is amended to read:

"7-12-2173. Disposition of bond or warrant proceeds. *(1)* The board of county commissioners shall use the proceeds of such sale in making payment to the contractor or contractors. Such payment may be made either from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board.

(2) All interest earned on the investment of bond or warrant proceeds must be credited to the improvement district fund from which the proceeds were withdrawn."

Section 3. Section 7-12-4207, MCA, is amended to read:

"7-12-4207. Investment of interest and sinking fund money. (1) The governing body of a city in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank insured by the federal deposit insurance corporation or in direct obligations of the United States government payable within 180 days from the time of investment.

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(2) All interest collected on such deposits or investments shall be credited to the *sinking* fund from which the money was withdrawn."

Section 4. Section 7-12-4205, MCA, is amended to read:

"7-12-4205. Disposition of bond or warrant proceeds. *(1)* The city or town council shall use the proceeds of such sale in making payment to the contractor or contractors. Such payment may be made either from time to time, on estimates made by the engineer in charge of such improvements for the city or town, or upon the entire completion of the improvements and the acceptance thereof by the city or town council.

(2) All interest earned on the investment of bond or warrant proceeds must be credited to the improvement district fund from which the proceeds were withdrawn."

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved April 5, 1983.

CHAPTER NO. 383

AN ACT ALLOWING ONLY 70 PERCENT OF THE WINDFALL PROFITS TAXES WITHHELD AND PAID BY AN OPERATOR TO BE DEDUCTED IN COMPUTING NET PROCEEDS TAXES ON OIL AND GAS; PROVIDING A METHOD TO ADJUST THE DEDUCTIBLE PERCENTAGE UPON REQUEST; PROVIDING LIMITATIONS; AMENDING SECTIONS 15-23-603 AND 15-23-605, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Adjustment of certain deductions — when.** (1) The department of revenue may adjust the percentage provided in 15-23-603 and 15-23-605 to reflect the actual excise taxes imposed by the United States government on production, sale, or removal of natural gas, petroleum, or other crude or mineral oil whenever:

(a) requested to do so by the taxpayer; or

(b) the department determines that the percentage does not accurately reflect the actual excise taxes paid by the operator.

(2) When the taxpayer requests under subsection (1) that the department adjust the percentage deduction allowed, the taxpayer must provide the data reasonably necessary for the department to make a determination under subsection (1).

(3) Any adjustment made under subsection (1) must be reflected in the net proceeds and royalty values certified to the county in the taxable year following the year of the final determination under subsection (1).

Section 2. **Future returns to reflect reduced deduction.** (1) Except as provided in subsection (2), each taxpayer who files a return for

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1983 production must reflect the reduced excise tax deduction pursuant to 15-23-603 and 15-23-605 for the period between January 1, 1980, and [the effective date of this act] on the net proceeds statement required under 15-23-602 in the first taxable year after the [effective date of this act].

(2) Either the taxpayer or the department may adjust the deduction under this section to reflect the actual excise taxes paid by the operator.

Section 3. Section 15-23-603, MCA, is amended to read:

"15-23-603. Net proceeds — how computed. (1) The department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from such well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds shall be determined by subtracting from the gross sales proceeds thereof the following:

(a) all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer that shall be determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid;

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the operation and development;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the well;

(d) all moneys expended for fire insurance and workers' compensation insurance and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees;

(e) *70% of* the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil yielded from such well, other than the amount of such taxes paid by or withheld from each royalty owner.

(2) No moneys invested in the well and improvements during any year except the year for which such statement is made may be included in such expenditures, except as provided in 15-23-604, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the well or superintending the management thereof."

Section 4. Section 15-23-605, MCA, is amended to read:

"15-23-605. Assessment of royalties. The amount of royalty received, valued as provided in 15-23-603(1)(a), less *70% of* the amount of excise taxes paid by or withheld from the royalty owner as reported pursuant to 15-23-602(8), shall be considered net proceeds to the recipient and shall be assessed as follows: upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to such royalty owners

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or claimants during the year for which such return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines."

Section 5. **Applicability date.** This act applies retroactively within the meaning of 1-2-109 to production years beginning on or after January 1, 1980.

Approved April 5, 1983.

CHAPTER NO. 384

AN ACT TO ALLOCATE TO THE POSTSECONDARY VOCATIONAL-TECHNICAL CENTERS AND ADULT BASIC EDUCATION PROGRAMS THAT PORTION OF INTEREST EARNINGS NOW BEING REINVESTED IN THE LOCAL IMPACT AND EDUCATION TRUST FUND; AMENDING SECTION 90-6-211, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Postsecondary vocational-technical center and adult basic education programs account established.** There is within the earmarked revenue fund a postsecondary vocational-technical center and adult basic education account. Money is paid into the account under 90-6-211. The state treasurer shall draw warrants payable from this account upon order of the superintendent of public instruction.

Section 2. Section 90-6-211, MCA, is amended to read:

"90-6-211. Disposition of interest from unexpended balance. The unexpended balance in the local impact and education trust fund account shall be invested as provided by statute by the board of investments. Of the income from such investments each year 10% shall be *paid into the earmarked revenue fund for use by the superintendent of public instruction for purposes of the postsecondary vocational-technical centers and adult basic education programs in the state, subject to the budgeting authority of the legislature. Within the account under [section 1], the revenue is shared between the postsecondary vocational-technical centers and the adult basic education programs.* Of the remaining 90% of the income from such investments, three-fourths shall be annually paid into the earmarked revenue fund for state equalization aid to public schools of the state and one-fourth each year shall be paid to the board of regents of higher education for use by the institutions of higher learning in the state, subject to the budgeting authority of the legislature. Except as provided in 90-6-205(4), the principal of the local impact and educational trust fund shall be dedicated to education and forever remain inviolate and sacred to this purpose as provided in sections 3 and 10 of Article X of the Montana constitution."

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 5, 1983.

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CHAPTER NO. 385

AN ACT REQUIRING THE SELLER OF A CONDOMINIUM UNIT TO NOTIFY PROSPECTIVE BUYERS OF THE EXISTENCE OF A CONTROLLING INTEREST IN THE CONDOMINIUM PROJECT AND OF THAT CONTROL OVER THE ASSOCIATION BYLAWS AND REGULATIONS; REQUIRING THE SELLER OF ANY CONDOMINIUM UNIT OR HIS AGENT TO FURNISH A BUYER WITH COPIES OF THE CONDOMINIUM BYLAWS, REGULATIONS, AND GOVERNING LAW; ALLOWING A PROSPECTIVE PURCHASER A PERIOD TO WITHDRAW WITHOUT PENALTY; AMENDING SECTION 70-23-606, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disclosure by seller — seller to furnish documents — delay period.** (1) Whenever a person, corporation, or other legal entity constitutes a majority of the unit owners, the seller or his agent, prior to signing any buy-sell agreement, shall give to any person purchasing or expressing a desire to purchase one of the project units notice that:

(a) the seller or other person constitutes a majority of the unit owners;

(b) any bylaws and administrative regulations governing the operation of the development and the association, as adopted by the association, have been adopted by the seller or other person acting as a majority of the unit owners; and

(c) any change in the bylaws or administrative regulations occurring while the seller or other person constitutes a majority of the unit owners may be made only with the approval of the seller or other person constituting a majority of unit owners.

(2) Upon the request of any person purchasing or expressing a desire to purchase one of the project units, the seller or his agent shall furnish to that buyer or prospective buyer, prior to signing any buy-sell agreement, a copy of the Unit Ownership Act, the bylaws of the association, and any administrative regulations governing the operation of the project or the association.

(3) Any buy-sell agreement shall provide that it is not effective until 72 hours after the prospective purchaser has received the documents required in subsection (2), and during that delay the prospective purchaser may withdraw his offer without penalty.

Section 2. Section 70-23-606, MCA, is amended to read:

"70-23-606. Records of receipts and expenditures affecting common elements — inspection. (1) The manager shall keep detailed accurate records in chronological order of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred.

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(2) Such records and the vouchers authorizing the payments *and receipts for payments* shall be available for examination *at the manager's place of business* by the unit owners at convenient hours of weekdays."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 70, chapter 23, and the provisions of Title 70, chapter 23, apply to section 1.

Approved April 5, 1983.

CHAPTER NO. 386

AN ACT TO ALLOW CERTAIN LOCAL GOVERNMENT ENTITIES TO RESTRICT AUDIT REPORT PUBLICATION TO A STATEMENT CONCERNING AVAILABILITY; AMENDING SECTION 2-7-521, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-7-521, MCA, is amended to read:

"2-7-521. Publication. *(1) Except as provided in subsection (3), after* the expiration of the 30-day period provided for in 2-7-515(1), the department shall send a copy of the general comments section of each audit report to a newspaper of general circulation for publication. However, the general comments section of each county audit report shall be sent to the official newspaper of the county for publication.

(2) The publication shall include a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) A publication concerning the audit report of a local government entity within (1)(c) through (1)(h) of 2-7-503 is required to contain only the statement provided for in subsection (2) and a statement providing that the audited government entity will send a copy of the audit report to any interested person upon request. A copy of the audit report must be sent to the newspaper publishing the statement.

(4) Publication costs shall be borne by the audited governmental entity."

Approved April 5, 1983.

CHAPTER NO. 387

AN ACT PERMITTING THE BOARD OF INVESTMENTS TO PRUDENTLY INVEST IN MONTANA BUSINESS ACTIVITIES UP TO 10 PERCENT OF ANY FUND; AMENDING SECTION 17-6-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-211, MCA, is amended to read:

"17-6-211. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

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(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, or of any corporation in which the United States government is a voting shareholder by act of congress; provided that all investments under this subsection (b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least 1 ½ to 1 and had received net income averaging $1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under this subsection (c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, savings and loan associations, *and credit unions* located in Montana, provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property, provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

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(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund; *and*

(g) any other investment in any business activity in the state, including activities that continue existing jobs or create new jobs in Montana, provided that investments which do not meet the requirements of subsections (1)(a) through (1)(f) may not, in the aggregate, exceed 10% of the fund from which each such investment is made.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds and the fund provided for in 17-6-203, subsection (4) may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period;

(c) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund;

(d) subsection (c) does not apply to funds provided for in 17-6-203(4).

(4) The board of investments shall endeavor to direct the state's investment business to those investment firms and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana."

Approved April 5, 1983.

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CHAPTER NO. 388

AN ACT REPEALING SECTIONS 37-61-304 THROUGH 37-61-306, MCA, WHICH ESTABLISH PROCEDURES FOR DISCIPLINING ATTORNEYS THAT ARE INCONSISTENT WITH ORDERS AND RULES OF THE SUPREME COURT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Supreme Court has original and exclusive jurisdiction to discipline persons admitted to practice law in Montana pursuant to Article VII, section 2(3), of the 1972 Montana Constitution and Title 37, chapter 61, MCA, and its inherent jurisdiction; and

WHEREAS, the Montana Supreme Court by its orders governing the disciplining of persons admitted to practice law in Montana established a Commission on Practice to receive and investigate complaints of misconduct by lawyers in Montana; and

WHEREAS, the Montana Supreme Court by its orders governing the disciplining of persons admitted to practice law in Montana also established grievance committees in each judicial district to assist the Commission on Practice in its investigation and processing of complaints of misconduct by attorneys in Montana; and

WHEREAS, sections 37-61-304 through 37-61-306, MCA, also address procedures for investigating and processing complaints of misconduct by attorneys in Montana; and

WHEREAS, the procedures set forth in sections 37-61-304 through 37-61-306, MCA, are inconsistent with the procedures established by the Montana Supreme Court in its orders.

THEREFORE, the Legislature of the State of Montana finds it is appropriate to repeal those inconsistent sections.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 37-61-304 through 37-61-306, MCA, are repealed.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 5, 1983.

CHAPTER NO. 389

AN ACT TO DIRECT THE DEPARTMENT OF JUSTICE AND LOCAL LAW ENFORCEMENT AGENCIES TO ESTABLISH A CENTRAL REPOSITORY FOR DENTAL RECORDS OF MISSING PERSONS AND UNIDENTIFIED DEAD BODIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Missing persons — dental records.** (1) Any person who reports a missing person to a police or sheriff's department or other law enforcement authority must be given a form supplied by the department

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of justice that authorizes the release of the dental records of the missing person. The form must state that if the person is still missing 30 days after the report was made, the form should be signed by a relative of the missing person and taken to the dentist of the missing person, who must release the dental records or copies thereof to the relative. The records must be submitted by the relative within the next 10 days to the law enforcement authority to which the missing person report was made.

(2) If the missing person has not been found within 30 days after the report was made and no relative exists or can be located, the law enforcement authority may execute a signed written declaration stating that an investigation into the location of the missing person is being conducted and that the dental records may be necessary to the investigation. A dentist shall release the missing person's dental records upon presentation of the declaration.

(3) If a person reported missing has not been found within 45 days after the report was made, the law enforcement authority conducting the investigation shall confer with the county coroner or state medical examiner and write a missing person report on a form supplied by the department of justice. The report and any dental records or copies thereof obtained under this section must be submitted to the department of justice.

(4) The department of justice shall maintain an information file concerning each person reported to it as missing. The file must include information received under this section and any other information the department considers relevant to locating the missing person.

(5) The department files must be made available to any law enforcement agency attempting to locate missing persons.

(6) A law enforcement authority that finds a missing person or is notified that he has been found shall notify the department of justice, which shall return all dental records to the dentist and destroy the file prepared under subsection (4) concerning the person.

Section 2. **Dental examination — records — report.** (1) If the coroner cannot identify a body, he or the state medical examiner shall have a dentist examine the body, and if the body cannot be identified from the dental examination, the coroner or state medical examiner must send the dental examination results to the department of justice on a form supplied by the department.

(2) The department is a repository for dental examination records filed with it under this section. The department shall compare such records with dental records filed with it pursuant to [section 1] in an attempt to identify the body and must submit any findings to the coroner or state medical examiner.

Approved April 5, 1983.

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CHAPTER NO. 390

AN ACT TO REQUIRE THE DEPARTMENT OF COMMERCE TO ESTABLISH THE RENEWAL DATES FOR CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSES BY RULE; AMENDING SECTIONS 37-1-101, 37-9-304, 37-9-305, 37-10-307, 37-14-310, 37-30-307, 37-30-423, 37-67-315, AND 37-69-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-101, MCA, is amended to read:

"37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of commerce shall:

(1) provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department;

(7) adopt rules establishing expiration dates of licenses for barbers, barbershops, professional engineers, land surveyors, nursing home administrators, optometrists, plumbers, and radiologic technologists."

Section 2. Section 37-9-304, MCA, is amended to read:

"37-9-304. Fees. (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board. A license shall expire *each year on a date set by rule of the department* and shall be renewable annually upon timely payment of the license fee.

(3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount fixed by the

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board. An inactive registration shall expire *each year on a date established by rule of the department* and shall be renewable annually upon timely payment of the inactive registration fee.

(4) The fee for issuing a duplicate license shall be fixed by the board."

Section 3. Section 37-9-305, MCA, is amended to read:

"37-9-305. Renewal of registration and license. Every holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year prior to the expiration *date* of his currently valid registration and license. Renewals of registrations or licenses shall be granted as a matter of course, providing the holder has completed a continuing education course prescribed or approved by the board; however, if the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances as would constitute grounds for suspension or revocation of a registration and license, it shall not issue the renewal."

Section 4. Section 37-10-307, MCA, is amended to read:

"37-10-307. Annual renewal — fee. A registered optometrist who desires to continue the practice of optometry in this state shall, *before the license expiration date established by rule of the department,* annually pay to the department a renewal fee prescribed by the board in return for which a renewal of registration shall be issued. If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without 90 days' notice having been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty prescribed by the board."

Section 5. Section 37-14-310, MCA, is amended to read:

"37-14-310. Biennial renewal — fee — reissuance of license. (1) Licenses expire on *the date established by rule of the department in* the first even-numbered year following the year of their issuance and on every even-numbered year thereafter.

(2) A license shall be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing such information as the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee."

Section 6. Section 37-30-307, MCA, is amended to read:

"37-30-307. Fees — handicapped persons exempted — other fees prohibited. (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card shall be prescribed by the board.

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(2) The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate shall be prescribed by the board.

(3) A person registered as a barber or barber apprentice shall, before *the expiration date established by rule of the department, annually* pay a license fee, set by the board based on clerical and administrative costs, for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before *the expiration date*, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(4) However, physically handicapped persons trained for the barber profession by the department of social and rehabilitation services and certified by that department as having successfully completed a 9-month course in a reputable barber college are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(5) No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state."

Section 7. Section 37-30-423, MCA, is amended to read:

"37-30-423. Initial inspection fee — renewal. (1) In addition to the fees and charges provided by law on March 11, 1939, barbershops established prior to that date and which had been under the inspection of the board shall pay an annual license fee set by the board based on clerical and administrative costs. Barbershops established after March 11, 1939, shall pay an initial inspection fee prescribed by the board for the first year or portion thereof and shall pay an annual license fee set by the board.

(2) Barbershop, school, or college licenses, *once issued,* expire *each year on the date established by rule of the department*, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before *the expiration date*, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before *the expiration date* each year shall, on renewal, pay a penalty prescribed by the board, and a barber school or college which fails to have the license renewed before *the expiration date* each year shall, on renewal, pay a penalty prescribed by the board."

Section 8. Section 37-67-315, MCA, is amended to read:

"37-67-315. Biennial renewal — fee — verification of competency. (1) Certificates of registration expire *every second year on the date established by rule of the department* and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for 2 years. This notice shall be mailed

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at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made *prior to the expiration date* by the payment of a fee as set by the board for either a professional engineer or land surveyor. For renewal of a dual license as both a professional engineer and land surveyor, the fee shall be set by the board.

(2) No certificate may be renewed unless the registrant submits a verified statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate biennially *prior to the expiration date* does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional year of the biennium shall be considered a new applicant and is required to submit a new application.

(4) The fee for any registrant who fails to renew his certificate *prior to the expiration date* shall be increased by an amount not to exceed 50% of his renewal fee. Renewal may not be completed until all fees are paid."

Section 9. Section 37-69-307, MCA, is amended to read:

"**37-69-307. Examination fee and annual renewal fee.** (1) No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department an examination fee prescribed by the board, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department an examination fee as prescribed by the board.

(2) A license when issued expires *each year on the date established by rule of the department.* A license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period of 1 year.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions."

Section 10. **Effective date.** This act is effective January 1, 1984.

Approved April 5, 1983.

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CHAPTER NO. 391

AN ACT AMENDING SECTION 7-8-2513, MCA, TO CLARIFY THAT A LEASE OF A MINERAL INTEREST BY THE BOARD OF COUNTY COMMISSIONERS IS NOT REQUIRED TO FIRST BE APPRAISED; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2513, MCA, is amended to read:

"**7-8-2513. Appraisal of land required — exception.** (1) The county commissioners shall, before they sell, exchange, or lease lands under the provisions of this part, cause such lands to be appraised by a qualified, independent person or persons, who may be but are not required to be an agent of the department of revenue, to determine the value of such lands for the purpose of such sale, exchange, or lease.

(2) For the purposes of this section, a renewal of the lease shall be considered an initial lease if the renewal is for a term exceeding 5 years.

(3) The board of county commissioners may lease mineral interests in land, whether such interests are severed or not, without an appraisal as required by subsection (1)."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively to July 1, 1975.

Approved April 5, 1983.

CHAPTER NO. 392

AN ACT TO PROVIDE AN ADDITIONAL SENTENCE FOR AN OFFENSE COMMITTED WHILE CARRYING A HANDGUN LOADED WITH ARMOR-PIERCING AMMUNITION; AMENDING SECTION 46-18-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition.** (1) A person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years or more than 25 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

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(3) For purposes of this section:

(a) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand; and

(b) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978.

Section 2. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3), (4), and (5) of 46-18-201, *[section 1]*, 46-18-221(3), and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46 apply to section 1.

Approved April 5, 1983.

CHAPTER NO. 393

AN ACT TO INCREASE THE MINIMUM PENALTIES FOR SALE OF DANGEROUS DRUGS, THUS REMEDYING AN OMISSION MADE DURING THE 46TH LEGISLATURE; AMENDING SECTION 45-9-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters,

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exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than *10* years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than *20* years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Approved April 5, 1983.

CHAPTER NO. 394

AN ACT MAKING THE HIGHWAY PATROL PRIMARILY RESPONSIBLE FOR AND REVISING RULES FOR SAFETY INSPECTIONS OF TRUCKS BASED IN MONTANA; AMENDING SECTION 44-1-1005, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-1-1005, MCA, is amended to read:

"44-1-1005. Enforcement of motor carriers law. A highway patrolman has the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203, *except that the highway patrol has primary responsibility for enforcement of standards adopted pursuant to 69-12-201(1)(f) with regard to vehicles based in Montana and for making inspections thereof at the request of the carrier. Inspection of a vehicle based in Montana may be*

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made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to 69-12-201(1)(f) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section shall prohibit the inspection of a motor vehicle as defined by 69-12-201(1)(f) at a safe location on a public road. The division shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort."

Approved April 5, 1983.

CHAPTER NO. 395

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO NONRESIDENT INSURANCE AGENTS AND POLICIES WRITTEN THROUGH SUCH AGENTS; PROVIDING FOR RECIPROCAL REQUIREMENTS FOR COUNTERSIGNATURE OF RESIDENT INSURANCE AGENTS ON POLICIES OF INSURANCE WRITTEN THROUGH NONRESIDENT AGENTS; REQUIRING THE FILING OF AN ANNUAL BUSINESS REPORT; IMPOSING CERTAIN MONTANA TAXES; AND PROVIDING PENALTIES FOR VIOLATIONS; AMENDING SECTIONS 33-17-404, 33-17-1001, 33-17-1004, AND 33-17-1111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-17-404, MCA, is amended to read:

"33-17-404. Countersigning coverage of residents. *Except as provided in 33-17-1111, a* nonresident agent shall not sign or countersign policies covering subjects of insurance located or to be performed in Montana."

Section 2. Section 33-17-1111, MCA, is amended to read:

"33-17-1111. Resident agent required — reciprocity — countersignature — records. (1) No authorized insurer shall issue a policy covering a subject of insurance resident, located, or to be performed in Montana unless:

(a) the policy is written through a licensed agent, resident in Montana, of the insurer;

(b) the policy is written through a *licensed* nonresident agent and, *if a countersignature would be required by the resident state of the nonresident agent upon a Montana resident agent writing business in the resident state of such nonresident agent,* the policy or countersignature endorsement attached thereto is countersigned by a *Montana* resident licensed agent; *or*

(c) the policy is written through a licensed nonresident agent who is a resident of a state that does not require countersignatures.

(2) No such countersignature shall be made in blank. The agent may by express written authorization given in advance delegate to his salaried clerical employee the power to so countersign in the name of the agent such contracts or classes of contracts as are designated in such authorization so long as the initials of such employee are written below the agent's name on such countersignature, but the agent shall not thereby delegate or have power to delegate to any other person the power or authority to bind an insurer with respect to any risk not already bound by the agent or other person having clear authority from the insurer so to bind. The agent shall be responsible for all of the acts of such employee within the scope of the authority so delegated. The agent shall keep a record of each and all coverages countersigned by him or by his authority.

(3) This section shall not apply to:

(a) reinsurance;

(b) life insurance, disability insurance, or annuity contracts;

(c) insurance of the rolling stock, vessels, or aircraft of any common carrier in interstate or foreign commerce or of any vehicle principally garaged and used in another state or covering any liability or other risks incident to the ownership, maintenance, or operation thereof;

(d) insurance of property in course of transportation interstate or in foreign trade or any liability or risk incident thereto;

(e) insurance of wet marine and transportation risks;

(f) countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business;

(g) bid bonds, as required under Title 18, chapter 1, part 2.

(4) Violation of this section shall not invalidate any contract otherwise valid as between the insurer and the insured."

Section 3. **Nonresident licensee to pay taxes — annual report required.** (1) A nonresident licensee is subject to personal income, business income, or corporate license taxes for all income earned on insurance policies issued to cover subjects or risks located or to be performed in Montana.

(2) A nonresident licensee shall make a written report to the commissioner annually within 45 days following the end of each calendar year. The report must contain a listing of all business written on subjects or risks located or performed in Montana. The report must be in a form prescribed by the commissioner and must include but not be limited to a listing of company, policy number, premium earned, and commission earned.

Section 4. **Premium tax imposed on policy issued through nonresident licensee.** Any insurer who issues a policy on a subject or risk located or to be performed in Montana through a nonresident licensee

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shall pay a premium tax on such policy to the state of Montana, in an amount and in the manner provided in 33-2-705.

Section 5. **Penalty.** A nonresident licensee who violates any condition of his Montana license or any provision of this part is subject to a fine by the commissioner of up to $50,000 for each such violation and may, at the discretion of the commissioner, have his Montana nonresident license revoked or suspended for a period of up to 5 years.

Section 6. Section 33-17-1001, MCA, is amended to read:

"33-17-1001. Suspension, revocation, or refusal of license. (1) *Except as provided in [section 5], the* commissioner may suspend for not more than 12 months or may revoke or refuse to continue any license issued under this chapter or any surplus line agent license if, after hearing held on not less than 20 days' advance notice by registered or certified mail of such hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee and to the insurers represented, as to an agent, or to the appointing agent, as to a solicitor, he finds that as to the licensee any one or more of the following causes exist:

(a) for any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) for obtaining or attempting to obtain any such license through misrepresentation or fraud;

(c) for violation of or noncompliance with any applicable provision of this code or for willful violation of any lawful rule or order of the commissioner;

(d) for misappropriation or conversion to his own use or illegal withholding of moneys or property belonging to policyholders or insurer or beneficiaries or others and received in conduct of business under the license;

(e) conviction, by final judgment, of a felony involving moral turpitude;

(f) if in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices or has shown himself to be incompetent, untrustworthy, or a source of injury and loss to the public.

(2) The license of a firm or corporation may be suspended, revoked, or refused also for any of such causes as relate to any individual designated in the license to exercise its powers."

Section 7. Section 33-17-1004, MCA, is amended to read:

"33-17-1004. Acting as insurance agent, solicitor, or adjuster without license — penalty. *Except as provided in [section 5], a* person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter is guilty of a misdemeanor and, upon conviction, shall be fined $500 or imprisoned in the county jail for 90 days or both."

Section 8. **Codification instruction.** (1) Sections 3 and 5 are intended to be codified as an integral part of Title 33, chapter 17, part 4.

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(2) Section 4 is intended to be codified as an integral part of Title 33, chapter 2, part 7, and the provisions of Title 33, chapter 2, part 7, apply to section 4.

Approved April 5, 1983.

CHAPTER NO. 396

AN ACT TO ADOPT 1978 REVISIONS TO THE UNIFORM FEDERAL LIEN REGISTRATION LAW; AMENDING SECTIONS 71-3-201 AND 71-3-203 THROUGH 71-3-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-201, MCA, is amended to read:

"71-3-201. Short title. This part may be cited as the "Uniform Federal Lien Registration Act"."

Section 2. Section 71-3-203, MCA, is amended to read:

"71-3-203. Execution of notices and certificates. Certification by the secretary of the treasury of the United States or his delegate, *or by any official or entity of the United States responsible for filing or certifying of notice of any lien,* of notices of liens, certificates, or other notices affecting *federal* liens entitles them to be filed. No other attestation, certification, or acknowledgment is necessary."

Section 3. Section 71-3-204, MCA, is amended to read:

"71-3-204. Federal liens — place of filing. (1) Notices of liens upon real property for *obligations* payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to *the liens* is situated.

(2) Notices of liens upon personal property, whether tangible or intangible, for *obligations* payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(a) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(b) if the person against whose interest the lien applies is a trust that is not covered by subsection (2)(a), in the office of the secretary of state;

(c) if the person against whose interest the lien applies is the estate of a decedent, in the office of the secretary of state;

(d) in all other cases, in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien."

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Section 4. Section 71-3-205, MCA, is amended to read:

"71-3-205. Duties of filing officer. (1) If a notice of federal lien, a refiling of a notice of *federal* lien, or a notice of revocation of any certificate described in subsection (2) is presented to the filing officer and:

(a) he is the secretary of state, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of 30-9-403(4) as if the notice were a financing statement within the meaning of the Uniform Commercial Code; or

(b) he is any other officer described in 71-3-204, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the *title and address of the official or entity certifying the lien,* and the total *amount* appearing on the notice of lien.

(2) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing he shall:

(a) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files; and

(b) cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(3) If a refiled notice of federal lien referred to in subsection (1) or any of the certificates or notices referred to in subsection (2) is presented for filing with any other filing officer specified in 71-3-204, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(4) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate.

(5) The fee for a certificate is $2. Upon request, the filing officer shall furnish a copy of any notice of federal lien or notice or certificate affecting a federal lien for a fee of $1 per page."

Section 5. Section 71-3-206, MCA, is amended to read:

"71-3-206. Fees. (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

(a) for a lien on real estate, $2;

(b) for a lien on tangible and intangible personal property, $2;

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(c) for a certificate of discharge or subordination, $1;

(d) for all other notices, including a certificate of release or nonattachment, $2.

(2) The officer shall bill the district directors of internal revenue *or other appropriate federal officials* on a monthly basis for fees for documents filed by them."

Approved April 5, 1983.

CHAPTER NO. 397

AN ACT TO REPEAL PROVISIONS ON OPTIONAL FORMS OF COUNTY GOVERNMENT IN ORDER TO ELIMINATE CONFUSION AND DUPLICATION WITH OTHER LAWS RELATING TO ALTERNATIVE FORMS OF LOCAL GOVERNMENT APPLICABLE TO COUNTIES; REPEALING SECTIONS 7-3-2101 THROUGH 7-3-2117 AND 7-3-2131 THROUGH 7-3-2134, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 7-3-2101 through 7-3-2117 and 7-3-2131 through 7-3-2134, MCA, are repealed.

Approved April 5, 1983.

CHAPTER NO. 398

AN ACT PROVIDING THAT THE DEPARTMENT OF REVENUE'S DESIGNEE INSTEAD OF ITS AGENT IS THE PARTY DEFENDANT IN CERTAIN PROCEEDINGS; AMENDING SECTION 15-8-115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-115, MCA, is amended to read:

"15-8-115. Department to defend property tax appeals — costs and judgments. (1) The department of revenue or its *designee* is the party defendant in any proceeding before a county tax appeal board, the state tax appeal board, or a court of law that seeks to dispute or adjust an action of the department under 15-8-101 arising from the exercise of the department's duties as prescribed by law or administrative rule. For the purposes of proceedings before county tax appeal boards, service on the department may be obtained by serving the local county assessor.

(2) Costs, if any, shall be assessed against the department and not against a local taxing unit.

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(3) In any suit brought in the courts of this state for the refund of taxes paid under protest and those funds are held by the treasurer of a unit of local government in a protest fund, the court shall enter judgment, exclusive of costs, against the treasurer if the court finds the taxes should be refunded."

Approved April 5, 1983.

CHAPTER NO. 399

AN ACT TO ADOPT THE AMERICAN BAR ASSOCIATION'S MODEL ACT ON PROFESSIONAL CORPORATIONS AND REPEAL THE LAWS REGULATING CORPORATIONS THAT RENDER PROFESSIONAL SERVICES; REPEALING SECTIONS 35-4-101 THROUGH 35-4-107, 35-4-201 THROUGH 35-4-204, AND 35-4-211 THROUGH 35-4-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 23] may be cited as the "Montana Professional Corporation Act".

Section 2. **Definitions.** As used in [sections 1 through 23], unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under [sections 1 through 23] to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the laws of this state.

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of [sections 1 through 23], except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under [sections 1 through 23] to own shares issued by a professional corporation.

Section 3. **Application to existing corporations.** (1) [Sections 1 through 23] apply to each professional corporation organized prior to October 1, 1983. If such a corporation is required to amend its corporate name

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or purposes to comply with [sections 1 through 23], it shall deliver one duly executed original and one copy of articles of amendment or restated articles of incorporation containing such amendments to the secretary of state within 90 days after October 1, 1983.

(2) Any corporation that is not a professional corporation may become subject to [sections 1 through 23] by delivering to the secretary of state one duly executed original and one copy of articles of amendment or restated articles of incorporation stating that the corporation elects to become subject to [sections 1 through 23] and containing such amendments of its corporate name or purposes as are required to comply with [sections 1 through 23].

Section 4. **Application of the Montana Business Corporation Act.** The Montana Business Corporation Act applies to professional corporations, domestic and foreign, except to the extent its provisions are inconsistent with [sections 1 through 23].

Section 5. **Regulatory authorities.** No professional corporation, domestic or foreign, may begin to render professional services in this state until it has filed a copy of its articles of incorporation with each licensing authority having jurisdiction of a type of professional service described in its articles of incorporation. Nothing in [sections 1 through 23] restricts or limits the authority or duty of a licensing authority with respect to natural persons rendering a professional service within the jurisdiction of the licensing authority or any law or rule pertaining to standards of professional conduct.

Section 6. **Purposes of corporation.** Professional corporations may be organized under [sections 1 through 23] only for the purpose of rendering professional services and services ancillary thereto within a single profession, except that a professional corporation may be incorporated for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which corporations may be organized under the Montana Business Corporation Act to the extent that such combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to such professions.

Section 7. **Prohibited activities.** A professional corporation may not engage in any profession or business other than the profession or professions and business permitted by its articles of incorporation.

Section 8. **General powers.** (1) A professional corporation has the powers enumerated in the Montana Business Corporation Act, except that it may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the articles of incorporation of the professional corporation.

(2) A professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

Section 9. **Rendering services.** A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render such services in this state; however, nothing in [sections 1 through 23] requires any person employed by a

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professional corporation to be licensed to perform services for which no license is otherwise required or prohibits the rendering of professional services by a licensed natural person acting in his individual capacity, even if such person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

Section 10. **Responsibility for services.** (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he had rendered such services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless he is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation whose employee performs professional services within the scope of his employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act.

Section 11. **Relationship to clients or patients — privileged communications.** (1) The relationship between an individual performing professional services as an employee of a professional corporation, domestic or foreign, and a client or patient is the same as if the individual performed such services as a sole practitioner.

(2) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a professional corporation, domestic or foreign, and its employees.

Section 12. **Corporate name.** The name of a domestic or foreign professional corporation:

(1) must contain the words "professional corporation" or the abbreviation "P.C.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business

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Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.

Section 13. **Directors and officers.** At least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation.

Section 14. **Issuance and transfer of shares.** (1) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation; and

(c) professional corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.

(2) The licensing authority may by rule further restrict or condition the issuance of shares in order to preserve ethical standards, but no rule may cause a person holding shares at the time the rule becomes effective to become a disqualified person.

(3) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to natural persons, general partnerships, and professional corporations qualified to hold shares issued directly to them by the corporation. This subsection does not prohibit the transfer of shares of a professional corporation by operation of law or court decree.

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(4) Each certificate representing shares of a professional corporation must state conspicuously upon its face that the shares are subject to restrictions on transfer imposed by [sections 1 through 23] and to restrictions on transfer imposed by the licensing authority pursuant to [sections 1 through 23].

(5) Any issuance or transfer of shares in violation of this section or a rule promulgated under this section is void.

Section 15. **Corporation's right to acquire its own shares.** A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for such purchase; however, no purchase of or payment for its own shares may be made at a time when the corporation is insolvent or if purchase or payment would make it insolvent.

Section 16. **Death or disqualification of a shareholder.** (1) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares may be transferred to a qualified person and if not so transferred must be purchased or redeemed by the corporation to the extent that the corporation has funds legally available for the purchase.

(2) If the share price is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation must within 6 months after such death or 30 days after such disqualification or transfer to a disqualified person make a written offer to pay for the shares at a specified price considered by the corporation to be the fair value thereof as of the date of death, disqualification, or transfer. The offer must be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and must be accompanied by both a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the offer and a profit and loss statement of the corporation for the 12-month period ending on the date of the balance sheet.

(3) If the fair value of the shares is agreed upon within 30 days after the date of the written offer, payment must be made within 60 days after the date of the offer or within such other period as the parties fix by agreement and upon surrender of the certificate or certificates representing such shares. Upon payment the transferor ceases to have any interest in such shares.

(4) If the fair value is not agreed upon within 30 days after the date of the written offer, the corporation must within the next 30 days file a petition in the district court of the county in this state where the registered office of the corporation is located, requesting that the fair value of such shares be found and determined. If the corporation fails or refuses to institute the proceeding, the disqualified person may do so. The disqualified person must be made a party to a proceeding brought by the corporation, and a copy of the petition must be served on the disqualified person

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if a resident of this state and must be served by certified mail if a nonresident. Service on nonresidents must also be made by publication as provided by law. The jurisdiction of the court is plenary and exclusive. The disqualified person is entitled to judgment against the corporation for the fair value of his shares as of the date of death, disqualification, or transfer and upon payment of the judgment must surrender to the corporation the certificates representing the shares. The court may in its discretion order that judgment be paid in installments determined by the court and may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value.

(5) The judgment must include interest from the date of death, disqualification, or transfer, at a rate the court finds equitable under the circumstances.

(6) The costs and expenses of a proceeding must be determined by the court and either assessed against the corporation or assessed as the court considers equitable if the court finds that an agreed share value was not reached because the disqualified person was arbitrary or vexatious or did not act in good faith. Expenses include reasonable compensation for and expenses of the appraisers, but do not include fees and expenses of counsel for and experts employed by any party, except that if the court determines that the fair value of shares materially exceeds the amount the corporation offered therefor or if no offer was made, the court may award to the disqualified person reasonable compensation for any expert employed by the disqualified person.

(7) If a purchase, redemption, or transfer of shares is not completed within 10 months after the death of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall cancel the shares on its books and the disqualified person has no further interest as a shareholder other than his right under this section to payment for such shares.

(8) Shares acquired by a corporation upon payment of their agreed value or payment of a judgment decreeing their fair value may be held and disposed of as in the case of other treasury shares.

(9) This section does not apply to shares of a disqualified person if the period of disqualification is less than 5 months.

(10) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, the bylaws, or any private agreement is specifically enforceable in the courts of this state.

(11) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

Section 17. **Amendment of articles of incorporation by personal representative of sole shareholder's estate.** A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the

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corporation may amend the articles of incorporation by signing a written consent to amendment. The articles of amendment must be executed in duplicate by the personal representative, guardian, conservator, or receiver and by the secretary or assistant secretary of the corporation, verified by one of the persons signing the articles, and must set forth:

(1) the name of the corporation;

(2) the amendments adopted;

(3) the date of adoption of the amendments; and

(4) the number of shares outstanding.

Section 18. **Proxies and voting trusts.** No proxy for shares of a professional corporation is valid unless given to a qualified person. A voting trust for shares of a professional corporation is invalid unless all trustees and beneficiaries are qualified persons, except that a voting trust is valid for 10 months after the death of a deceased beneficiary or for 5 months after a beneficiary has become a disqualified person.

Section 19. **Merger and consolidation.** A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation. If the surviving or new corporation will render professional services in this state, it shall comply with [sections 1 through 23].

Section 20. **Termination of all professional services.** If a professional corporation ceases to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform its corporate name to the requirements of the Montana Business Corporation Act. The corporation may then continue in existence as a corporation under the Montana Business Corporation Act and is no longer subject to [sections 1 through 23].

Section 21. **Involuntary dissolution.** A professional corporation may be dissolved involuntarily as provided in Title 35, chapter 6.

Section 22. **Admission of foreign professional corporations — application — revocation.** (1) A foreign professional corporation is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the corporation meets the requirements of [section 12];

(b) the corporation is organized only for purposes for which a professional corporation may be organized under [sections 1 through 23]; and

(c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) No foreign professional corporation is required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

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(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of [sections 1 through 23]. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent thereto, and shall concurrently mail to each corporation at its registered office in this state a notice that such certification has been made. No certificate of authority of a foreign professional corporation may be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during such 60 days.

Section 23. **Annual reports and statements.** (1) The annual report of each domestic professional corporation and each foreign professional corporation authorized to transact business in this state filed with the secretary of state pursuant to the Montana Business Corporation Act must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) Each domestic professional corporation and each foreign professional corporation authorized to transact business in this state must annually file before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and addresses of the directors and officers of the corporation and such additional information as the licensing authority may by rule prescribe as appropriate in determining whether the corporation is complying with the provisions of [sections 1 through 23] and rules promulgated under [sections 1 through 23]. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

Section 24. **Repealer.** Sections 35-4-101 through 35-4-107, 35-4-201 through 35-4-204, and 35-4-211 through 35-4-216, MCA, are repealed.

Section 25. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 26. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 5, 1983.

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CHAPTER NO. 400

AN ACT TO PROVIDE THAT THE PROHIBITION AGAINST LICENSING UNDERTAKERS AS LIFE OR DISABILITY INSURANCE AGENTS APPLIES ONLY TO UNDERTAKERS OPERATING IN THIS STATE; AMENDING SECTION 33-17-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-17-203, MCA, is amended to read:

"33-17-203. General qualification for license as life or disability insurance agent. For the protection of the people of this state the commissioner may not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter. In addition, the individual must qualify as follows:

(1) be 18 years of age or more;

(2) be a resident in and of this state or of another state if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state;

(3) have been appointed as such an agent by an authorized insurer, subject to issuance of the license;

(4) be competent, trustworthy, and of good reputation;

(5) have had experience or training or be otherwise adequately qualified in the kind or kinds of insurance as to which he is to be licensed and be reasonably familiar with the provisions of this code governing his operations as such an agent and with the provisions of the policies and contracts he proposes to offer under the license;

(6) pass any written examination for the license required under this chapter;

(7) not use or intend to use the license principally for the writing of insurance on the lives or interests of himself or his relatives to the second degree;

(8) not be a funeral director, undertaker, or mortician *operating in this state*, or an officer, employee, or representative thereof *or hold an interest in such business.*"

Approved April 5, 1983.

CHAPTER NO. 401

AN ACT TO REQUIRE GUARDIANS AND CONSERVATORS FOR WARDS AND PROTECTED PERSONS TO FILE AN ANNUAL ACCOUNTING; AMENDING SECTIONS 72-5-321 AND 72-5-438, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required

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to report the condition of the incapacitated person and of the estate that has been subject to his possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this state.

(b) If entitled to custody of his ward, he shall make provision for the care, comfort, and maintenance of his ward and whenever appropriate arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If no conservator for the estate of the ward has been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(e) *Unless waived by the court, a* full guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control *annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.*

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for his failure to file a timely report.

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(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee such aspects of the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21."

Section 2. Section 72-5-438, MCA, is amended to read:

"72-5-438. Accounts — final and intermediate. (1) *Unless waived by the court, every* conservator must account to the court for his administration of the trust *annually for the preceding year and also* upon his resignation or removal. *A copy of the account must be served upon the protected person's parent, guardian, child, or sibling if that person has made an effective request under 72-5-404.* On termination of the protected person's minority or disability, a conservator may account to the court or he may account to the former protected person or his personal representative.

(2) Subject to appeal or vacation within the time permitted, an order made upon notice and hearing allowing an intermediate account of a conservator adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order made upon notice and hearing allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

(4) Upon failure, as determined by the clerk of court, of the conservator to file an annual account, the court shall order the conservator to file the account and give good cause for his failure to file a timely account."

Approved April 5, 1983.

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CHAPTER NO. 402

AN ACT TO GENERALLY REVISE MONTANA'S CODIFICATION OF THE UNIFORM COMMERCIAL CODE BY SUBSTANTIALLY ADOPTING THE 1972 AND 1977 CHANGES RECOMMENDED BY THE UNIFORM LAW COMMISSIONERS; AMENDING SECTIONS 30-1-105, 30-1-201, 30-2-107, 30-2-207, 30-2-702, 30-4-208, 30-5-114, 30-5-116, 30-8-102 THROUGH 30-8-107, 30-8-201 THROUGH 30-8-208, 30-8-301 THROUGH 30-8-320, 30-8-401 THROUGH 30-8-406, 30-9-102 THROUGH 30-9-106, 30-9-203 THROUGH 30-9-205, 30-9-301, 30-9-302, 30-9-304 THROUGH 30-9-306, 30-9-308, 30-9-309, 30-9-312, 30-9-313, 30-9-318, 30-9-401 THROUGH 30-9-407, 30-9-501, 30-9-502, 30-9-504, AND 30-9-505, MCA; AND REPEALING SECTION 30-9-408, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-1-105, MCA, is amended to read:

"30-1-105. Territorial application of the code — parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.

Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.

Bulk transfers subject to the Chapter on Bulk Transfers. 30-6-102.

Applicability of the Chapter on Investment Securities. 30-8-106.

Perfection provisions of the Chapter on Secured Transactions. 30-9-103."

Section 2. Section 30-1-201, MCA, is amended to read:

"30-1-201. General definitions. Subject to additional definitions contained in the subsequent chapters of this code which are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

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(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or *certificated* security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. *All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be considered to be persons in the business of selling goods of that kind.* "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negotiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

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(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or *certificated* securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or *a certificated* investment security drawn, issued, or endorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when:

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather

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than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

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(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Chapter 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Chapter 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment is in any event subject to the provisions on consignment sales (30-2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or endorsement means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

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(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form."

Section 3. **Subordinated obligations.** An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

Section 4. Section 30-2-107, MCA, is amended to read:

"30-2-107. Goods to be severed from realty — recording. (1) A contract for the sale of minerals or the like *(including oil and gas)* or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller, but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) *or of timber to be cut* is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third-party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale."

Section 5. Section 30-2-207, MCA, is amended to read:

"30-2-207. Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional *or different* terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

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(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this code."

Section 6. Section 30-2-702, MCA, is amended to read:

"30-2-702. Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (30-2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this chapter (30-2-403). Successful reclamation of goods excludes all other remedies with respect to them."

Section 7. Section 30-4-208, MCA, is amended to read:

"30-4-208. Security interest of collecting bank in items, accompanying documents, and proceeds. (1) A bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents

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and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Chapter 9 except that:

(a) no security agreement is necessary to make the security interest enforceable (30-9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds."

Section 8. Section 30-5-114, MCA, is amended to read:

"30-5-114. Issuer's duty and privilege to honor — right to reimbursement. (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (30-7-507) or of a *certificated* security (30-8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (30-3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (30-7-502) or a bona fide purchaser of a *certificated* security (30-8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit."

Section 9. Section 30-5-116, MCA, is amended to read:

"30-5-116. Transfer and assignment. (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

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(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of *an account* under Chapter 9 on Secured Transactions and is governed by that chapter except that:

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Chapter 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit."

Section 10. Section 30-8-102, MCA, is amended to read:

"30-8-102. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) A "*certificated* security" is *a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is*:

(i) *represented by an instrument* issued in bearer or registered form;

(ii) of a type commonly dealt in *on* securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) either one of a class or series or by its terms is divisible into a class or series of *shares, participations, interests, or obligations.*

(b) An "uncertificated security" is a share, participation, or other interest in property or an enterprise *of the issuer* or an obligation of the issuer *which is:*

(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(c) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing *that* is a *certificated* security is governed by this chapter and not by *Title 30, chapter 3,* even though it also meets the requirements of that chapter. This chapter does not apply to money. *If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer or another temporary purpose or payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this chapter.*

(d) A *certificated* security is in "registered form" *if:*

(i) it specifies a person entitled to the security or to the rights it *represents;* and

(ii) its transfer may be registered upon books maintained for that purpose by or on behalf of *the* issuer, or the security so states.

(e) A *certificated* security is in "bearer form" *if* it runs to bearer according to its terms and not by reason of any endorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation *registered as a "clearing agency" under the federal securities laws or a corporation*:

(a) at least 90% of *whose* capital stock is held by or for one or more *organizations, none of which, other than a national securities exchange or association, holds in excess of 20% of the capital stock of the corporation and* each of *which is*:

(i) subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws;

(ii) a broker, dealer, or investment company registered under the *federal securities laws*; or

(iii) a national securities exchange or association registered under *the federal securities laws*; and

(b) any remaining capital stock of which is held by individuals who have purchased *it* at or prior to the time of their taking office as directors of *the* corporation and who have purchased only so much of such capital stock as *is* necessary to permit them to qualify as directors.

(4) A "custodian bank" is *a* bank or trust company *that* is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

(5) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Adverse claim". *30-8-302.*

"Bona fide purchaser". 30-8-302.

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"Broker". 30-8-303.

"Debtor". 30-9-105.

"Financial intermediary". 30-8-313.

"Guarantee of the signature". 30-8-402.

"Initial transaction statement". [section 53].

"Instruction". 30-8-308.

"Intermediary bank". 30-4-105.

"Issuer". 30-8-201.

"Overissue". 30-8-104.

"Secured party". 30-9-105.

"Security agreement". 30-9-105.

(6) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 11. Section 30-8-103, MCA, is amended to read:

"**30-8-103. Issuer's lien.** A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(1) the security is certificated and the right of the issuer to *the* lien is noted conspicuously *thereon; or*

(2) the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, in the initial transaction statement sent to the registered owner or the registered pledgee."

Section 12. Section 30-8-104, MCA, is amended to read:

"30-8-104. Effect of overissue — "overissue". (1) The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but *if*:

(a) an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase *the* security *for* him *and either to deliver a certificated security or to register the transfer of an uncertificated security to him,* against surrender of *any certificated* security he holds; or

(b) a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue."

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Section 13. Section 30-8-105, MCA, is amended to read:

"30-8-105. Certificated securities negotiable — statements and instructions not negotiable — presumptions. (1) *Certificated securities* governed by this chapter are negotiable instruments.

(2) Statements [(section 53)], notices, or the like sent by the issuer of uncertificated securities and instructions (30-8-308) are neither negotiable instruments nor certificated securities.

(3) In any action on a security:

(a) unless specifically denied in the pleading, each signature on *a certificated* security, in a necessary endorsement, *on an initial transaction statement, or on an instruction* is admitted;

(b) *if* the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) *if* signatures *on a certificated security* are admitted or established, production of the *security* entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;

(d) if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and

(e) after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (30-8-202)."

Section 14. Section 30-8-106, MCA, is amended to read:

"30-8-106. Applicability. The *law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the* validity of a security, *the effectiveness of registration by the issuer,* and the rights and duties of the issuer with respect to:

(1) registration of transfer *of a certificated security;*

(2) registration of transfer, pledge, or release of an uncertificated security; and

(3) sending of statements of uncertificated securities."

Section 15. Section 30-8-107, MCA, is amended to read:

"30-8-107. Securities transferable — action for price. (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to *transfer* securities may *transfer* any *certificated* security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him or in blank *or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.*

(2) *If* the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price *of:*

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(a) *certificated* securities accepted by the buyer;

(b) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and

(c) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale."

Section 16. **Registration of pledge and release of uncertificated securities.** A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by him. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under [this chapter] are terminated by the registration of release.

Section 17. Section 30-8-201, MCA, is amended to read:

"30-8-201. "Issuer". (1) With respect to obligations on or defenses to a security, "issuer" includes a person who:

(a) places or authorizes the placing of his name on a *certificated* security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in his property or in an enterprise or to evidence his duty to perform an obligation *represented* by the *certificated* security;

(b) creates shares, participations, or other interests in his property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;

(c) directly or indirectly creates fractional interests in his rights or property, which fractional interests are *represented* by *certificated* securities; or

(d) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of his guaranty, whether or not his obligation is noted on *a certificated* security *or on statements of uncertificated securities sent pursuant to [section 53].*

(3) With respect to registration of transfer, *pledge, or release* (*part* 4 of this chapter), "issuer" means a person on whose behalf transfer books are maintained."

Section 18. Section 30-8-202, MCA, is amended to read:

"30-8-202. Issuer's responsibility and defenses — notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a security include:

(a) if the security is certificated, those stated on the security;

(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered pledgee; and

(c) those made part of the security by reference, *on the certificated security or in the initial transaction statement,* to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent that the terms referred to do not conflict with the terms *stated on the certificated security or contained in the statement. A* reference *under this subsection* does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the *certificated* security *or statement* expressly states that a person accepting it admits notice.

(2) A *certificated* security *in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value,* other than *a security* issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid *with respect to the* purchaser without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid *with respect to* a subsequent purchaser for value and without notice of the defect. *This subsection* applies to an issuer *that* is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as provided in the case of certain unauthorized signatures (30-8-205), lack of genuineness of a *certificated* security *or an initial transaction statement* is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer *of a certificated or uncertificated security,* including nondelivery and conditional delivery of *a certificated* security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security *that* is the subject of the contract or in the plan or arrangement pursuant to which *the* security is to be issued or distributed."

Section 19. Section 30-8-203, MCA, is amended to read:

"30-8-203. Staleness as notice of defects or defenses. (1) After an act or event *creating* a right to immediate performance of the principal obligation *represented* by *a certificated* security or *that* sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer *if*:

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(a) the act or event is one requiring the payment of money, the delivery of *certificated* securities, *the registration of transfer of uncertificated securities*, or *any of those* on presentation or surrender of the *certificated* security; *the* funds or securities are available on the date set for payment or exchange; and he takes the security more than 1 year after that date; and

(b) the act or event is not covered by *subsection (1)*(a) and he takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

(2) A call *that* has been revoked is not within subsection (1)."

Section 20. Section 30-8-204, MCA, is amended to read:

"**30-8-204. Effect of issuer's restrictions on transfer.** *A* restriction on transfer *of a security* imposed by the issuer, even though otherwise lawful, is ineffective against *any* person *without* actual knowledge of it *unless:*

(1) the security is certificated and the restriction is noted conspicuously thereon; or

(2) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, in the initial transaction statement sent to the registered owner or the registered pledgee."

Section 21. Section 30-8-205, MCA, is amended to read:

"**30-8-205. Effect of unauthorized signature on issue.** An unauthorized signature placed on a *certificated* security prior to or in the course of issue *or placed on an initial transaction statement* is ineffective, *but* the signature is effective in favor of a purchaser for value *of the certificated security or a purchaser for value of an uncertificated security to whom such initial transaction statement has been sent if the purchaser is* without notice of the lack of authority *and* the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security or of similar securities or *the* immediate preparation for signing *of any of them*; or

(2) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security *or initial transaction statement.*"

Section 22. Section 30-8-206, MCA, is amended to read:

"**30-8-206. Completion or alteration of certificated security or initial transaction statement.** (1) *If* a *certificated* security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of *the* incorrectness.

(2) A complete *certificated* security *that* has been improperly altered, even though fraudulently, remains enforceable but only according to its original terms.

(3) If an initial transaction statement contains the signatures necessary to its validity but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.

(4) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms."

Section 23. Section 30-8-207, MCA, is amended to read:

"**30-8-207. Rights and duties of issuer with respect to registered owners and registered pledgees.** (1) Prior to due presentment for registration of transfer of a *certificated* security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(2) Subject to the provisions of subsections (3), (4), and (6), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, receive notifications, and otherwise to exercise all the rights and powers of an owner.

(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) register the transfer of the security to the new owner free of pledge if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee if the instruction specifies a new owner and the existing pledgee; or

(c) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee if the instruction specifies the existing owner and another pledgee.

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(5) Continuity of perfection of a security interest is not broken by registration of transfer under (4)(b) or by registration of release and pledge under (4)(c) if the security is assigned.

(6) If an uncertificated security is subject to a registered pledge:

(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(7) Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like."

Section 24. Section 30-8-208, MCA, is amended to read:

"30-8-208. Effect of signature of authenticating trustee, registrar, or transfer agent. (1) A person placing his signature upon a *certificated* security *or an initial transaction statement* as authenticating trustee, registrar, transfer agent, or the like warrants to a purchaser for value *of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is* without notice of the particular defect, that:

(a) the *certificated* security *or initial transaction statement* is genuine;

(b) his own participation in the issue *or registration of the transfer, pledge, or release* of the security is within his capacity and within the scope of the *authority* received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects."

Section 25. Section 30-8-301, MCA, is amended to read:

"30-8-301. Rights acquired by purchaser. (1) Upon *transfer* of a security *to a purchaser (30-8-313),* the purchaser acquires the rights in the security which his transferor had or had actual authority to convey *unless the purchaser's rights are limited by 30-8-302(4).*

(2) A *transferee* of a limited interest acquires rights only to the extent of the interest *transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.*"

Section 26. Section 30-8-302, MCA, is amended to read:

"30-8-302. "Bona fide purchaser" — "adverse claim" — title acquired by bona fide purchaser. *(1)* A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:

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(a) who takes delivery of a *certificated* security in bearer form or registered form, issued or endorsed to him or in blank;

(b) to whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or

(c) to whom a security is transferred under the provisions of subsections (1)(c), (1)(d)(i), or (1)(g) of 30-8-313.

(2) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(3) A bona fide purchaser, in addition to acquiring the rights of a purchaser (30-8-301), also acquires his interest in the security free of any adverse claim.

(4) Notwithstanding 30-8-301(1), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security or who as a prior holder of that certificated security had notice of an adverse claim cannot improve his position by taking from a bona fide purchaser."

Section 27. Section 30-8-303, MCA, is amended to read:

"30-8-303. "Broker". "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to a customer. Nothing in this chapter determines the capacity in which a person acts for purposes of any other statute or rule to which *the* person is subject."

Section 28. Section 30-8-304, MCA, is amended to read:

"30-8-304. Notice to purchaser of adverse claims. (1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a *certificated* security is charged with notice of adverse claims if:

(a) the security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under 30-8-403(4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, in the initial transaction statement sent to the registered owner or the registered pledgee.

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(3) The fact that the purchaser (including a broker for the seller or buyer) *of a certificated or uncertificated security* has notice that the security is held for a third person or is registered in the name of or endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute *constructive* notice of adverse claims. *However, if* the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims."

Section 29. Section 30-8-305, MCA, is amended to read:

"30-8-305. Staleness as notice of adverse claims. An act or event *that* creates a right to immediate performance of the principal obligation *represented* by *a certificated* security or sets a date on or after which *a certificated* security is to be presented or surrendered for redemption or exchange does not itself constitute any notice of adverse claims except in the case of a *transfer*:

(1) after 1 year from any date set for presentment or surrender for redemption or exchange; or

(2) after 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date."

Section 30. Section 30-8-306, MCA, is amended to read:

"30-8-306. Warranties on presentment and transfer of certificated securities — warranties of originators of instructions. (1) A person who presents a *certificated* security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value without notice of adverse claims who receives a new, reissued, or reregistered *certificated* security on registration of transfer *or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him* warrants only that he has no knowledge of any unauthorized signature (30-8-311) in a necessary endorsement.

(2) A person by transferring a *certificated* security to a purchaser for value warrants only that:

(a) his transfer is effective and rightful;

(b) the security is genuine and has not been materially altered; and

(c) he knows *of* no fact which might impair the validity of the security.

(3) *If* a *certificated* security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers *a certificated* security received, or after payment and on order of the debtor delivers

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that security to a third person, makes only the warranties of an intermediary under subsection (3).

(5) A person who originates an instruction warrants to the issuer that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer, he will be entitled to the registration of transfer, pledge, or release.

(6) A person who originates an instruction warrants to any person specially guaranteeing his signature (30-8-312(3)) that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer:

(i) he will be entitled to the registration of transfer, pledge, or release; and

(ii) the transfer, pledge, or release requested in the instructions will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (30-8-312(6)) that:

(a) he is an appropriate person to originate the instruction;

(b) the uncertificated security referred to therein is valid; and

(c) at the time the instruction is presented to the issuer:

(i) the transferor will be entitled to the registration of transfer, pledge, or release;

(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and

(iii) the requested transfer, pledge, or release will be rightful.

(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and, at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of subsections (7)(b), (7)(c)(ii), and (7)(c)(iii).

(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(a) his transfer is effective and rightful; and

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(b) the uncertificated security is valid.

(10) A broker gives to his customer, the issuer, and a purchaser the *applicable* warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer."

Section 31. Section 30-8-307, MCA, is amended to read:

"30-8-307. Effect of delivery without endorsement — right to compel endorsement. *If* a *certificated* security in registered form has been delivered to a purchaser without a necessary endorsement, he may become a bona fide purchaser only as of the time the endorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied."

Section 32. Section 30-8-308, MCA, is amended to read:

"30-8-308. Endorsements — instructions. (1) An endorsement of a *certificated* security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or *his* signature is written without more upon the back of the security.

(2) An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies to whom the security is to be transferred or who has power to transfer it. A holder may convert a blank endorsement into a special endorsement.

(3) An endorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

(4) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

(5) An instruction originated by an appropriate person is:

(a) a writing signed by an appropriate person; or

(b) a communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person. If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(6) "An appropriate person" in subsection (1) means the person specified by the *certificated* security or by special endorsement to be entitled to the security.

(7) An "appropriate person" in subsection (5) means:

(a) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(b) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subsections (6) and (7), an "appropriate person" in subsections (1) and (5) includes:

(a) if the person *designated* is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;

(b) if the *persons designated are described as* more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

(c) if the person *designated* is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian, or like fiduciary;

(d) if the *persons designated are described as* more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors;

(e) a person having power to sign under applicable law or controlling instrument; *and*

(f) to the extent that *the person designated or* any of the foregoing persons may act through an agent, his authorized agent.

(9) Unless otherwise agreed, the endorser *of a certificated security* by his endorsement *or the originator of an instruction by his origination* assumes no obligation that the security will be honored by the issuer *but only the obligations provided in 30-8-306.*

(10) Whether the person signing is appropriate is determined as of the date of signing, and an endorsement *made or an instruction originated* by *him* does not become unauthorized for the purposes of this chapter by virtue of any subsequent change of circumstances.

(11) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, *pledge, or release,* does not render his endorsement *or an instruction originated by him* unauthorized for the purposes of this chapter."

Section 33. Section 30-8-309, MCA, is amended to read:

"30-8-309. Effect of endorsement without delivery. An endorsement of a *certificated* security, whether special or in blank, does not constitute a transfer until delivery of the security on which it appears or, if the endorsement is on a separate document, until delivery of both the document and the *certificated* security."

Section 34. Section 30-8-310, MCA, is amended to read:

"30-8-310. Endorsement of certificated security in bearer form. An endorsement of a *certificated* security in bearer form may give notice of adverse claims (30-8-304) but does not otherwise affect any right to registration the holder *possesses.*"

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Section 35. Section 30-8-311, MCA, is amended to read:

"30-8-311. Effect of unauthorized endorsement or instruction. Unless the owner *or pledgee* has ratified an unauthorized endorsement *or instruction* or is otherwise precluded from asserting its ineffectiveness:

(1) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued, or reregistered *certificated* security on registration of transfer *or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him*; and

(2) an issuer who registers the transfer of a *certificated* security upon the unauthorized endorsement *or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction* is subject to liability for improper registration (30-8-404)."

Section 36. Section 30-8-312, MCA, is amended to read:

"30-8-312. Effect of guaranteeing signature, endorsement, or instruction. (1) Any person guaranteeing a signature of an endorser of a *certificated* security warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to endorse (30-8-308); and

(c) the signer had legal capacity to sign.

(2) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to originate the instruction (30-8-308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of such security, as to which fact the signature guarantor makes no warranty;

(c) the signer had legal capacity to sign; and

(d) the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

(3) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection (2)) but also warrants that at the time the instruction is presented to the issuer:

(a) the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and

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(b) the transfer, pledge, or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) The guarantor *under subsections (1) and (2) or the special guarantor under subsection (3)* does not otherwise warrant the rightfulness of the particular transfer, *pledge, or release.*

(5) Any person *guaranteeing* an endorsement of a *certificated* security *makes not only the warranties of a signature guarantor under subsection (1)* but also *warrants* the rightfulness of the particular transfer in all respects.

(6) Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection (3) but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.

(7) No issuer may require *a special guarantee of signature (subsection (3))*, a guarantee of endorsement *(subsection (5)), or a guarantee of instruction (subsection (6))* as a condition to registration of transfer, *pledge, or release.*

(8) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to *the* person for any loss resulting from breach of the warranties."

Section 37. Section 30-8-313, MCA, is amended to read:

"30-8-313. When transfer to purchaser occurs — financial intermediary as bona fide purchaser — "financial intermediary". (1) *Transfer of a security or limited interest (including a security interest) therein* to a purchaser occurs *only*:

(a) *at the time* he or a person designated by him acquires possession of a *certificated* security;

(b) at the time the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;

(c) at the time his *financial intermediary* acquires possession of a *certificated* security specially endorsed to or issued in the name of the purchaser;

(d) at the time a financial intermediary, not a clearing corporation, sends him confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser:

(i) a specific certificated security in the financial intermediary's possession;

(ii) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

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(iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(e) with respect to an identified *certificated* security to be delivered while still in the possession of a third person, *not a financial intermediary, at the time* that person acknowledges that he holds for the purchaser;

(f) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(g) at the time appropriate entries *to the account of the purchaser or a person designated by him* on the books of a clearing corporation are made under 30-8-320;

(h) with respect to the transfer of a security interest if the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by:

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

(ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(iv) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(i) with respect to the transfer of a security interest if the transferor has signed a security agreement containing a description of the security at the time new value is given by the secured party; or

(j) with respect to the transfer of a security interest if the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under (a), (b), (c), (d), or (g) of subsection (1) at the time the transferor has signed a security agreement containing a description of the security and value is given by a secured party.

(2) The purchaser is the owner of a security held for him by *a financial intermediary*, but *cannot be a bona fide purchaser of a security so held* except *in the circumstances* specified in (c), *(d)(i)*, and *(g)* of subsection (1). *If* a security *so held* is part of a fungible bulk, *as in the circumstances specified in (d)(ii) and (d)(iii) of subsection (1)*, the purchaser is the owner of a proportionate property interest in the fungible bulk.

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(3) Notice of an adverse claim received by the *financial intermediary* or by the purchaser after the *financial intermediary* takes delivery *of a certificated security* as a holder for value *or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value* is not effective either as to the *financial intermediary* or as to the purchaser. However, as between the *financial intermediary* and the purchaser, the purchaser may demand *transfer* of an equivalent security as to which no notice of adverse claim has been received.

(4) A "financial intermediary" is a bank, broker, clearing corporation, or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer."

Section 38. Section 30-8-314, MCA, is amended to read:

"30-8-314. Duty to transfer — when completed. (1) Unless otherwise agreed, *if* a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to *transfer at the time* he:

(i) places a *certificated* security in the possession of the selling broker or of a person designated by the broker;

(ii) causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(iii) if requested causes an acknowledgment to be made to the selling broker that *a certificated or uncertificated security* is held for *the broker; or*

(iv) places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(b) the selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to *transfer at the time he:*

(i) places a certificated security in the possession of the buying broker or a person designated by *the buying broker;*

(ii) causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(iii) places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(iv) effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

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(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to *transfer* a security under a contract of purchase is not fulfilled until he:

(a) places *a certificated* security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by *the purchaser;*

(b) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) if the purchaser requests, causes an acknowledgment to be made to the purchaser that *a certificated or uncertificated security* is held for *the purchaser.*

(3) Unless made on an exchange, a sale to a broker purchasing for his own account is within subsection *(2)* and not within subsection (1)."

Section 39. Section 30-8-315, MCA, is amended to read:

"30-8-315. Action against transferee based upon wrongful transfer. (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, *as* against anyone except a bona fide purchaser, *may:*

(a) reclaim possession of the *certificated* security *wrongfully transferred;*

(b) obtain possession of any new *certificated* security *representing* all or part of the same rights;

(c) compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or

(d) have damages.

(2) If the transfer is wrongful because of an unauthorized endorsement *of a certificated security,* the owner may also reclaim or obtain possession of the security or *a new certificated* security even from a bona fide purchaser if the ineffectiveness of the purported endorsement can be asserted against him under the provisions of this chapter on unauthorized endorsements (30-8-311).

(3) The right to obtain or reclaim possession of a *certificated* security *or to compel the origination of a transfer instruction* may be specifically enforced, *the* transfer *of a certificated or uncertificated security* enjoined, and *a certificated* security impounded pending the litigation."

Section 40. Section 30-8-316, MCA, is amended to read:

"30-8-316. Purchaser's right to requisites for registration of transfer, pledge, or release on books. Unless otherwise agreed, the transferor *of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security* on due demand *must* supply his purchaser with any proof of his authority to transfer, *pledge, or release* or with any other requisite necessary to obtain registration of the transfer, *pledge, or*

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release of the security; but if the transfer, *pledge, or release* is not for value, a transferor, *pledgor, or pledgee* need not do so unless the purchaser furnishes the necessary expenses. Failure *within a reasonable time* to comply with a demand made gives the purchaser the right to reject or rescind the transfer, *pledge, or release.*"

Section 41. Section 30-8-317, MCA, is amended to read:

"**30-8-317. Creditor's rights.** (1) *Subject to the exceptions in subsections (3) and (4), no* attachment or levy upon a *certificated* security or any share or other interest *represented* thereby which is outstanding *is* valid until the security is actually seized by the officer making the attachment or levy, but a *certificated* security which has been surrendered to the issuer may be *reached by a creditor by legal process at the issuer's chief executive office in the United States.*

(2) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(3) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(4) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

(6) A creditor whose debtor is the owner of a security *is* entitled to aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching *the* security or in satisfying the claim by means allowed at law or in equity in regard to property *that* cannot readily be *reached* by ordinary legal process."

Section 42. Section 30-8-318, MCA, is amended to read:

"**30-8-318. No conversion by good faith conduct.** An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling, or otherwise dealing with securities) has received *certificated* securities and sold, pledged, or delivered them *or has sold or caused the transfer or pledge of uncertificated securities over which he had control* according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal *had* no right *so to deal with the securities.*"

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Section 43. Section 30-8-319, MCA, is amended to read:

"30-8-319. Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

(2) delivery of *a certificated* security *or transfer instruction* has been accepted, *or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within 10 days after receipt of the initial transaction statement confirming the registration,* or payment has been made, but the contract is enforceable under this provision only to the extent of *the* delivery, *registration,* or payment;

(3) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(4) the party against whom enforcement is sought admits in his pleading, testimony, or otherwise in court that a contract was made for *the* sale of a stated quantity of described securities at a defined or stated price."

Section 44. Section 30-8-320, MCA, is amended to read:

"30-8-320. Transfer or pledge within central depository system. (1) *In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation, reducing the account of the transferor, pledgor, or pledgee and increasing the account of the transferee, pledgee, or pledgor by the amount of the obligation or the number of shares or rights transferred, pledged, or released if the security is shown on the account of a transferor, pledgor, or pledgee on the books of the clearing corporation and is subject to the control of the clearing corporation; and:*

(a) if certificated:

(i) is in the custody of *the* clearing corporation, *another clearing corporation,* a custodian bank, or a nominee of *any of them*; and

(ii) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation, *a* custodian bank, or a nominee of *any of them*; *or*

(b) if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them.

(2) Under this section entries may be *made* with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the

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registered owner, certificate or bond number, or the like and, in appropriate cases, may be on a net basis, taking into account other transfers, pledges, *or releases* of the same security.

(3) A transfer under this section *is effective (30-8-313), and the purchaser acquires the rights of the transferor (30-8-301). A pledge or release under this section is the transfer of a limited interest.* If a pledge or the creation of a security interest is intended, *the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made [(section 45)].* A transferee or pledgee under this section *may be a bona fide purchaser (30-8-302).*

(4) A transfer or pledge under this section *is* not a registration of transfer under *part* 4.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries *or* the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

(6) Under this section a clearing corporation shall, upon written request, furnish to any issuer within a reasonable time a list disclosing the names of all persons who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units of each such security of the issuer on deposit. The clearing corporation may charge the issuer a fee for such written list, but the fee shall bear a reasonable relation to the cost of furnishing such list."

Section 45. **Enforceability, attachment, perfection, and termination of security interests.** (1) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to a provision of 30-8-313(1).

(2) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under 30-8-313(1)(i) becomes unperfected after 21 days unless within that time the requirements for transfer under any other provision of 30-8-313(1) are satisfied.

(3) A security interest in a security is subject to the provisions of chapter 9, but no filing is required to perfect the security interest and no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in subsections (1)(h), (1)(i), or (1)(j) of 30-8-313. The secured party has the rights and duties provided under 30-9-207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of 30-8-313(1). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In

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that case, the security interest becomes unperfected after 21 days unless within that time the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him pursuant to a provision of 30-8-313(1).

Section 46. Section 30-8-401, MCA, is amended to read:

"30-8-401. Duty of issuer to register transfer, pledge, or release. (1) *If* a *certificated* security in registered form is presented to the issuer with a request to register transfer *or an instruction is presented to the issuer with a request to register transfer, pledge, or release*, the issuer *shall* register the transfer, *pledge, or release* as requested if:

(a) the security is endorsed *or the instruction was originated* by the appropriate person or persons (30-8-308);

(b) reasonable assurance is given that those endorsements *or instructions* are genuine and effective (30-8-402);

(c) the issuer has no duty *as to* adverse claims or has discharged *the* duty (30-8-403);

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer, *pledge, or release* is in fact rightful or is to a bona fide purchaser.

(2) *If* an issuer is under a duty to register a transfer, *pledge, or release* of a security, the issuer is also liable to the person presenting *a certificated security or an instruction* for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, *pledge, or release.*"

Section 47. Section 30-8-402, MCA, is amended to read:

"30-8-402. Assurance that endorsements and instructions are effective. (1) The issuer may require the following assurance that each necessary endorsement *of a certificated security or each instruction* (30-8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature (30-8-312 *(1) or (2)*) of the person endorsing *a certificated security or originating an instruction, including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity*;

(b) *if* the endorsement is *made or the instruction is originated* by an agent, appropriate assurance of authority to sign;

(c) *if* the endorsement is *made or the instruction is originated* by a fiduciary, appropriate evidence of appointment or incumbency;

(d) *if* there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; *and*

(e) *if* the endorsement is *made or the instruction is originated* by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

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(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility *if they* are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within *180* days before the date of presentation for transfer, *pledge, or release*; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of *that* document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to *the* evidence *if they* are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in subsection (3)(b), both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, *pledge, or release.*"

Section 48. Section 30-8-403, MCA, is amended to read:

"30-8-403. Issuer's duty as to adverse claims. (1) An issuer to whom a *certificated* security is presented for registration *shall* inquire into adverse claims if:

(a) a written notification of an adverse claim is received at a time and in a manner *affording* the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued, or reregistered *certificated* security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require under 30-8-402*(4)*.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the *certificated* security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

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(b) *there is filed with the issuer* an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under 30-8-402*(4)* or receives notification of an adverse claim under subsection (1) of this section, *if* a *certificated* security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) an issuer registering a *certificated* security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an endorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee.

(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(a) claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(b) claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(c) claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to him; and

(d) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under 30-8-402(4).

(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:

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(a) including a notation of the claim in any statements sent with respect to the security under [section 53(3), (6), and (7)]; and

(b) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(6) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under [section 53].

(7) Notwithstanding subsections (4) and (5), if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

(a) the claim was embodied in legal process which expressly provides otherwise;

(b) the claim was asserted in a written notification from the registered pledgee;

(c) the claim was one as to which the issuer was charged with notice from a controlling instrument it required under 30-8-402(4) in connection with the pledgee's request for transfer; or

(d) the transfer requested is to the registered owner."

Section 49. Section 30-8-404, MCA, is amended to read:

"**30-8-404. Liability and nonliability for registration.** (1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner, *pledgee,* or any other person suffering loss as a result of the registration of a transfer, *pledge, or release* of a security if:

(a) there were on or with *a certificated* security the necessary endorsements *or the issuer had received an instruction originated by an appropriate person* (30-8-308); and

(b) the issuer had no duty *as to* adverse claims or has discharged *the* duty (30-8-403).

(2) *If* an issuer has registered a transfer of a *certificated* security to a person not entitled to it, the issuer on demand *shall* deliver a like security to the true owner unless:

(a) the registration was pursuant to subsection (1);

(b) the owner is precluded from asserting any claim for registering the transfer under *30-8-405(1)*; or

(c) *the* delivery would result in overissue, in which case the issuer's liability is governed by 30-8-104.

(3) If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured

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party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

(a) the registration was pursuant to subsection (1); or

(b) the registration would result in overissue, in which case the issuer's liability is governed by 30-8-104."

Section 50. Section 30-8-405, MCA, is amended to read:

"**30-8-405. Lost, destroyed, and stolen certificated securities.** (1) *If* a security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under *30-8-404* or any claim to a new security under this section.

(2) *If* the owner of a *certificated* security claims that the security has been lost, destroyed, or wrongfully taken, the issuer *shall* issue a new *certificated* security *or, at the option of the issuer, an equivalent uncertificated security* in place of the original security if the owner:

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of *a* new *certificated or uncertificated* security, a bona fide purchaser of the original *certificated* security presents it for registration of transfer, the issuer *shall* register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by 30-8-104. In addition to any rights on the indemnity bond, the issuer may recover the new *certificated* security from the person to whom it was issued or any person taking under him except a bona fide purchaser *or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.*"

Section 51. Section 30-8-406, MCA, is amended to read:

"**30-8-406. Duty of authenticating trustee, transfer agent, or registrar.** (1) *If* a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its *certificated* securities or *in the registration of transfers, pledges, and releases of its uncertificated securities,* in the issue of new securities, or in the cancellation of surrendered securities:

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) with regard to the particular functions he performs, *he has* the same obligation to the holder or owner of *a certificated* security *or to the*

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owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar, or other agent is notice to the issuer with respect to the functions performed by the agent."

Section 52. **Exchangeability of securities.** (1) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(2) Upon surrender of a certificated security with all necessary endorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (30-8-403), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

(3) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(a) the registered owner, if the uncertificated security was not subject to a registered pledge; or

(b) the registered pledgee, if the uncertificated security was subject to a registered pledge.

Section 53. **Statements of uncertificated securities.** (1) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

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(e) the date the transfer was registered.

(2) Within 2 business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units pledged;

(c) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the pledge was registered.

(3) Within 2 business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units released from pledge;

(c) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the release was registered.

(4) An "initial transaction statement" is the statement sent to the new registered owner and, if applicable, to the registered pledgee pursuant to subsection (1), the registered pledgee pursuant to subsection (2), or the registered owner pursuant to subsection (3). Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "Initial Transaction Statement".

(5) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

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(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(d) the date the transfer was registered.

(6) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(d) the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(7) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the name and address and any taxpayer identification number of the registered pledgee;

(d) the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under 30-8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(8) If the issuer sends the statements described in subsections (6) and (7) at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(9) Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a

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record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security."

Section 54. Section 30-9-102, MCA, is amended to read:

"30-9-102. Policy and subject matter of chapter. (1) Except as otherwise provided in 30-9-104 on excluded transactions, this chapter applies:

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures, including goods, documents, instruments, general intangibles, chattel paper, *or* accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This chapter applies to security interests created by contract, including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in 30-9-310.

(3) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply."

Section 55. Section 30-9-103, MCA, is amended to read:

"30-9-103. Perfection of security interests in multiple state transactions. *(1) (a) Subsection (1) applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).*

(b) Except as otherwise provided in subsection (1), perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this chapter to perfect the security interest:

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(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter considered to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in (1)(d)(i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (30-9-307(2)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in (1)(d)(i) and (ii).

(2) (a) Subsection (2) applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in subsection (2), perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in (2)(d), a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in (1)(d).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) (a) Subsection (3) applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery, and commercial harvesting machinery, and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (2).

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(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in subsection (3)(c), "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be considered located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act, it shall be considered located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is considered to have been unperfected as against a person who became a purchaser after the change.

(4) The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities."

Section 56. Section 30-9-104, MCA, is amended to read:

"30-9-104. Transactions excluded from chapter. This chapter does not apply:

(1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property;

(2) to a landlord's lien;

(3) to a lien given by statute or other rule of law for services or materials except as provided in 30-9-310 on priority of such liens;

(4) to a transfer of a claim for wages, salary, or other compensation of an employee;

(5) to *a transfer by a government or governmental subdivision or agency*;

(6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right *to payment under a contract* to an assignee who is also to do the performance under the contract, *or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness*;

(7) to a transfer of an interest or claim in or under any policy of insurance, *except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312)*;

(8) to a right represented by a judgment *(other than a judgment taken on a right to payment which was collateral)*;

(9) to any right of setoff;

(10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder;

(11) to a transfer in whole or in part of any claim arising out of tort; *or*

(12) to a transfer of an interest in any deposit account (30-9-105(1)), except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312)."

Section 57. Section 30-9-105, MCA, is amended to read:

"30-9-105. Definitions and index of definitions. (1) In this chapter, *the following definitions apply* unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, *but a charter or other contract involving the use or hire of a vessel is not chattel paper.* When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

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(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. When the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

(f) "Document" means document of title as defined in *the general definitions of chapter 1 (*30-1-201*) and a receipt of the kind described in 30-7-201(2).*

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (30-9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, *or minerals or the like (including oil and gas) before extraction.* "Goods" also includes *standing timber that is to be cut and removed under a conveyance or contract for sale,* the unborn young of animals, and growing crops.

(i) "Instrument" means a negotiable instrument (defined in 30-3-104), or a *certificated* security (defined in 30-8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment.

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation.

(l) "Security agreement" means an agreement which creates or provides for a security interest.

(m) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

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(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or trolley bus business; the electric or electronics communications transmission business; the transmission of goods by pipeline; or the transmission or the production and transmission of electricity, steam, gas, or water or the provision of sewer service.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". 30-9-106.

"Attach". 30-9-203.

"Construction mortgage". 30-9-313(1).

"Consumer goods". 30-9-109(1).

"Equipment". 30-9-109(2).

"Farm products". 30-9-109(3).

"Fixture". 30-9-313(1).

"Fixture filing". 30-9-313.

"General intangibles". 30-9-106.

"Inventory". 30-9-109(4).

"Lien creditor". 30-9-301(3).

"Proceeds". 30-9-306(1).

"Purchase money security interest". 30-9-107.

"United States". 30-9-103.

(3) The following definitions in other chapters apply to this chapter:

"Check". 30-3-104.

"Contract for sale". 30-2-106.

"Holder in due course". 30-3-302.

"Note". 30-3-104.

"Sale". 30-2-106.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 58. Section 30-9-106, MCA, is amended to read:

"30-9-106. Definitions — "account" — "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, *whether or not it has been earned by performance.* "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, *and money. All rights to payment earned or unearned under a charter or other contract involving*

the use or hire of a vessel and all rights incident to the charter or contract are accounts."

Section 59. **Consignment.** (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this chapter by 30-2-326(3)(c) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

(a) the consignor complies with the filing provision of the Chapter on Sales with respect to consignments (30-2-326(3)(c)) before the consignee receives possession of the goods;

(b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor;

(c) the holder of the security interest receives the notification within 5 years before the consignee receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of subsection (1) have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

Section 60. Section 30-9-203, MCA, is amended to read:

"30-9-203. Attachment and enforceability of security interest — proceeds, formal requisites. (1) Subject to the provisions of 30-4-208 on the security interest of a collecting bank, *[section 45] on security interests in securities,* and 30-9-113 on a security interest arising under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties *with respect to the collateral and does not attach* unless:

(a) the collateral is in the possession of the secured party *pursuant to agreement* or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops *growing or to be grown* or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by 30-9-306.

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(4) A transaction, although subject to this chapter, is also subject to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959, to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301 through 81-8-305, Title 61, chapter 3, *Title 16, chapters 1 through 6,* and Title 31, chapter 1, part 4, as amended, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

Section 61. Section 30-9-204, MCA, is amended to read:

"30-9-204. After-acquired property — future advances. *(1)* Except as provided in subsection *(2)* a security agreement may provide that *any or* all obligations covered by the security agreement *are to be secured by after-acquired collateral.*

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (30-9-314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment *(30-9-105(1))*."

Section 62. Section 30-9-205, MCA, is amended to read:

"30-9-205. Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle, or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle, or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee."

Section 63. Section 30-9-301, MCA, is amended to read:

"30-9-301. Persons who take priority over unperfected security interests — right of "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under 30-9-312;

(b) a person who becomes a lien creditor before *the security interest* is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business *or is a buyer of farm products in ordinary course of business,* to the extent that he gives value and

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receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within *10* days after the *debtor receives possession of the* collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien."

Section 64. Section 30-9-302, MCA, is amended to read:

"30-9-302. When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under 30-9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

(c) a security interest *created by an assignment of a beneficial interest in a trust or a decedent's estate*;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be *registered, and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in 30-9-313*;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (30-4-208), *in securities [(section 45)]*, or arising under the Chapter on Sales or covered in subsection (3) of this section;

(g) an assignment for the benefit of all creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) the following statutes of this state: Title 61, chapter 3; Title 23, chapter 2, parts 5 and 6; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (30-9-103(2)).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in 30-9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter."

Section 65. Section 30-9-304, MCA, is amended to read:

"**30-9-304. Perfection of security interest in instruments, documents, and goods covered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession.** (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in *money or* instruments (other than *certificated securities or* instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) *of this section and subsections (2) and (3) of 30-9-306 on proceeds.*

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

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(4) A security interest in instruments *(other than certificated securities)* or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument *(other than a certificated security)*, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange; *but priority between conflicting security interests in the goods is subject to 30-9-312(3)*; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with applicable provisions of this chapter."

Section 66. Section 30-9-305, MCA, is amended to read:

"30-9-305. When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subsection 30-5-116*(2)(a)*), goods, instruments *(other than certificated securities)*, *money*, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party."

Section 67. Section 30-9-306, MCA, is amended to read:

"30-9-306. "Proceeds" — secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received *upon the sale, exchange, collection, or other disposition of* collateral or proceeds. *Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement.* Money, checks, *deposit accounts*, and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange, or other disposition thereof unless *the disposition* was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

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(3) *(a)* The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:

(i) a filed financing statement *covers* the original collateral *and the* proceeds *are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;*

(ii) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(iii) the security interest in the proceeds is perfected before the expiration of the 10-day period.

(b) Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest *only in the following proceeds*:

(a) in identifiable noncash proceeds *and in separate deposit accounts containing only proceeds*;

(b) in identifiable cash proceeds in the form of money which is *neither* commingled with other money *nor* deposited in a *deposit* account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a *deposit* account prior to the insolvency proceedings; and

(d) in all cash and *deposit* accounts of the debtor *in which* proceeds have been commingled *with other funds*, but the perfected security interest under this paragraph (d) is:

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings *less the sum of:*

(A) the payments to the secured party on account of cash proceeds received by the debtor during such period; and

(B) the cash proceeds received by the debtor during such period to which the secured party is entitled under (4)(a) through (4)(c).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

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(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods."

Section 68. Section 30-9-308, MCA, is amended to read:

"30-9-308. Purchase of chattel paper and instruments. A purchaser of chattel paper or *an* instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest *in the chattel paper or instrument:*

(1) which is perfected under 30-9-304 (permissive filing and temporary perfection) *or under 30-9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or*

(2) which is claimed merely as proceeds of inventory subject to a security interest (30-9-306), even though he knows that the specific paper is subject to the security interest."

Section 69. Section 30-9-309, MCA, is amended to read:

"30-9-309. Protection of purchasers of instruments, documents, and securities. Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to whom a negotiable document of title has been duly negotiated (30-7-501) or a bona fide purchaser of a security *(30-8-302)*, and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers."

Section 70. Section 30-9-312, MCA, is amended to read:

"30-9-312. Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated *in other sections of this part and* in the following sections shall govern where applicable: 30-4-208 with respect to the security interest of collecting banks in items

being collected, accompanying documents, and proceeds; *30-9-103 on security interests related to other jurisdictions; and [section 59] on consignments.*

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A *perfected* purchase money security interest in inventory has priority over a conflicting security interest in the same *inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer* if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the *inventory*; and

(b) *the purchase money* secured party *gives notification in writing* to the holder of the *conflicting* security interest *if the holder had filed a financing statement covering the same types of inventory:*

(i) before the date of the filing made by the purchase money *secured party; or*

(ii) before the beginning of the 21-day period if the purchase money security interest is temporarily perfected without filing or possession (30-9-304(5)); and

(c) the holder of the conflicting security interest receives notification *within 5 years* before the debtor receives possession of the *inventory*; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral *or its proceeds* if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within *10* days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined *according to the following rules*:

(a) *Conflicting security interests rank according to priority* in the *time* of filing *or perfection. Priority dates from the time a* filing *is first made covering the collateral or the time the* security interest *is* first *perfected, whichever is earlier, provided that there is no period thereafter when there is neither* filing *nor perfection.*

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(b) *So* long as *conflicting security interests are unperfected, the first to attach has priority.*

(6) For the *purposes* of subsection *(5)*, a *date of* filing *or perfection as to collateral is also a date of* filing *as to proceeds.*

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under [section 45] on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 71. Section 30-9-313, MCA, is amended to read:

"30-9-313. Priority of security interests in fixtures. (1) *In* this section *and in the provisions of part 4 of this chapter referring to fixture filing, unless the context otherwise requires:*

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under *real estate* law*;*

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 30-9-402(5);

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest *under this chapter may be created in goods that are fixtures or may continue in* goods *that* become fixtures, *but no security interest exists under this chapter in ordinary building materials incorporated into an improvement on land.*

(3) This chapter does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of real estate if:

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate;

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate;

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(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this chapter; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When *the* secured party has priority over *all owners and encumbrancers of* the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation."

Section 72. Section 30-9-318, MCA, is amended to read:

"30-9-318. Defenses against assignee — modification of contract after notification of assignment — term prohibiting assignment ineffective — identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in 30-9-206, the rights of an assignee are subject to:

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

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(2) So far as the right to payment *or a part thereof* under an assigned contract has not *been fully earned by performance*, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the *amount due or to become due* has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made, and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor *is effective if it* prohibits assignment of an account *or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.*"

Section 73. Section 30-9-401, MCA, is amended to read:

"**30-9-401. Place of filing — erroneous filing — removal of collateral.** (1) Except for financing statements filed pursuant to 30-9-409, the proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept, and in addition when the collateral is crops *growing or to be grown*, in the office of the county clerk and recorder in the county where the land is located;

(b) when the collateral is *timber to be cut or is minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which* are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the

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location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) *The* rules stated in 30-9-103 determine whether filing is necessary in this state.

(5) For the purposes of this section, the residence of an organization is its place of business, if it has one, or its chief executive office if it has more than one place of business."

Section 74. Section 30-9-402, MCA, is amended to read:

"**30-9-402. Formal requisites of financing statement — amendments — mortgage as financing statement.** (1) A financing statement is sufficient if it *gives the names of the debtor and the secured party,* is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to 30-9-409 when the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. *When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5).* A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by *the debtor.*

(2) A financing statement which otherwise complies with subsection (1) is sufficient *when* it is signed by the secured party *instead of the debtor if* it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, *or when the debtor's location is changed to this state.* Such a financing statement must state that the collateral was brought into this state *or that the debtor's location was changed to this state* under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) ....

Address ....

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Name of secured party (or assignee) ....

Address ....

1. This financing statement covers the following types (or items) of property:

(Describe) ....

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) ....

3. (If *applicable*) The above goods are to *become fixtures on*:

(Describe Real Estate) ....

and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is ....

4. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever Signature of Debtor (or Assignor) ....

is applicable) Signature of Secured Party (or Assignee) ....

(4) *A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If* any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. *In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.*

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or a financing statement filed as a fixture filing (30-9-313) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

(i) the goods are described in the mortgage by item or type;

(ii) the goods are or are to become fixtures related to the real estate described in the mortgage;

(iii) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(iv) the mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor so changes his name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."

Section 75. Section 30-9-403, MCA, is amended to read:

"30-9-403. What constitutes filing — duration of filing — effect of lapsed filing — duties of filing officer. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) *Except as provided in subsection (6), a* filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of *the* 5-year period unless a continuation statement is filed prior to the lapse. *If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later.* Upon lapse the security interest becomes unperfected, *unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.*

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. *A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee.* Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may

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be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it *immediately if he has retained a microfilm or other photographic record, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.*

(4) *Except as provided in subsection (7), a* filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement *or a microfilm or other photographic copy thereof* for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be the following amounts for:

(a) an original financing or continuation statement in standard form — $2;

(b) a termination statement in standard form — $2;

(c) a financing statement indicating an assignment in standard form — $2;

(d) a statement of release of collateral in standard form — $2;

(e) a certificate from the filing officer showing that an effective financing statement is on file, requested in the standard form — $3;

(f) any of the documents in (a) through (e) other than in standard form — an additional $2;

(g) each name more than one required to be indexed — $2;

(h) a uniform indexing fee of $2 for showing a trade name for any person; and

(i) any of the filing and indexing in subsections (a), (b), or (d) where the collateral is equipment or rolling stock of railroads or street railways — $15.

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5)

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or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described."

Section 76. Section 30-9-404, MCA, is amended to read:

"**30-9-404. Termination statement.** (1) *If a financing statement covering consumer goods is filed on or after October 1, 1983, then within 1 month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases, whenever* there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must on written demand by the debtor send the debtor, *for each filing officer with whom the financing statement was filed, a termination* statement *to the effect* that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a *separate written* statement *of assignment signed* by the secured party of record *complying with 30-9-405(2), including payment of the required fee.* If the affected secured party fails to *file such a termination statement as required by this subsection or to* send such a termination statement within 10 days after proper demand therefor, he shall be liable to the debtor for $100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, he must note it in the index. *If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party, stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement and of any related continuation statement, statement of assignment, and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after 1 year after receipt of the termination statement.*

(3) *The uniform* fee for filing and indexing *the* termination statement shall be *set pursuant to 30-9-403.*"

Section 77. Section 30-9-405, MCA, is amended to read:

"**30-9-405. Assignment of security interest — duties of filing officer — fees.** (1) A financing statement may disclose an assignment of a security interest in the collateral described in the *financing* statement by indication in the *financing* statement of the name and address of the

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assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in 30-9-403(4). *The uniform* fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be *set pursuant to 30-9-403.*

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing *in the place where the original financing statement was filed* of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, the name and address of the assignee, and except as provided in 30-9-409(2), *containing* a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement *or in the case of a fixture filing or a filing covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), he shall index the assignment under the name of the assignor as grantor and to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform* fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be *set pursuant to 30-9-403. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (30-9-402(6)) may be made only by an assignment of the mortgage in the manner provided by 71-1-207.*

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

Section 78. Section 30-9-406, MCA, is amended to read:

"30-9-406. Release of collateral — duties of filing officer — fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released (except as provided in 30-9-409(2)), the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. *A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee.* Upon presentation of such a statement *of release* to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. *The uniform* fee for filing and noting such a statement of release shall be *set pursuant to 30-9-403.*"

Section 79. Section 30-9-407, MCA, is amended to read:

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"30-9-407. Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the name and *address* of each secured party therein. The uniform fee for such a certificate shall be *set pursuant to 30-9-403.* Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page."

Section 80. **Financing statements covering consigned or leased goods.** A consignor or lessor of goods may file a financing statement using the terms "consignor", "consignee", "lessor", "lessee", or the like instead of the terms specified in 30-9-402. The provisions of this part shall be applied as appropriate to such a financing statement, but its filing may not of itself be a factor in determining whether or not the consignment or lease is intended as security (30-1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor that attaches to the consigned or leased goods is perfected by such filing.

Section 81. Section 30-9-501, MCA, is amended to read:

"30-9-501. Default — procedure when security agreement covers both real and personal property. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies, and duties provided in 30-9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement, and those provided in 30-9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (*30-9-504(3) and* 30-9-505) and with respect to redemption of collateral (30-9-506), but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

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(a) 30-9-502*(2)* and 30-9-504*(2)* insofar as they require accounting for surplus proceeds of collateral;

(b) 30-9-504*(3)* and 30-9-505*(1)*, which deal with disposition of collateral;

(c) 30-9-505*(2)*, which deals with acceptance of collateral as discharge of obligation;

(d) 30-9-506, which deals with redemption of collateral; and

(e) 30-9-507*(1)*, which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment, the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter."

Section 82. Section 30-9-502, MCA, is amended to read:

"30-9-502. Collection rights of secured party. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under 30-9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides."

Section 83. Section 30-9-504, MCA, is amended to read:

"30-9-504. Secured party's right to dispose of collateral after default — effect of disposition. (1) A secured party after default may sell, lease, or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the *chapter* on *sales* (*chapter* 2). The proceeds of disposition shall be applied in the order following to:

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(a) the reasonable expenses of retaking, holding, preparing for sale *or lease*, selling, *leasing*, and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of account or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor *if he has not signed after default a statement renouncing or modifying his right to notification of sale. In* the case of consumer goods *no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an* interest in the collateral. The secured party may buy at any public sale, and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders, or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement, or the like and who receives a transfer

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of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter."

Section 84. Section 30-9-505, MCA, is amended to read:

"30-9-505. Compulsory disposition of collateral — acceptance of the collateral as discharge of obligation. (1) If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods and has not signed after default a statement renouncing or modifying his rights under this part, a secured party who has taken possession of collateral must dispose of it under 30-9-504, and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under 30-9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor *if he has not signed after default a statement renouncing or modifying his rights under this subsection. In* the case of consumer goods, *no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral.* If the *secured party receives objection in writing from a* person entitled to receive notification within *21* days after the *notice was sent,* the secured party must dispose of the collateral under 30-9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation."

Section 85. **Repealer.** Section 30-9-408, MCA, is repealed.

Section 86. **Codification instruction.** Sections 3, 16, 45, 52, 53, 59, and 81 are intended to be codified as integral parts of Title 30, chapters 1 through 9, and the provisions of Title 30, chapters 1 through 9, apply to sections 3, 16, 45, 52, 53, 59, and 81.

Approved April 6, 1983.

CHAPTER NO. 403

AN ACT REVISING THE UNIFORM ANATOMICAL GIFT ACT BY BROADENING THE DEFINITION OF "BANK OR STORAGE FACILITIES"; REMOVING LIABILITY FOR PERSONS ACTING IN GOOD FAITH UNDER THE ACT; AND ESTABLISHING QUALIFICATIONS FOR PERSONS PERFORMING EYE ENUCLEATION SERVICES UNDER THE ACT; AMENDING SECTIONS 72-17-102 AND 72-17-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-17-102, MCA, is amended to read:

"72-17-102. Definitions. (1) "Bank or storage facility" means a facility for storage of human bodies or parts thereof, *operated by or under*

the supervision of a person who qualifies as a donee under 72-17-202(1)(a) or (b).

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Donor" means an individual who makes a gift of all or part of his body.

(5) "Eyebank association of America" means the organization nationally recognized by that name with headquarters in Houston, Texas, that surveys banks or storage facilities for the storage of eye tissue upon their requests and grants membership and certification status to any such bank or storage facility that it finds meets its standards and requirements.

(6) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(7) "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

(8) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids, and any other portions of a human body.

(9) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity.

(10) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(11) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

(12) "Technician trained in eye enucleation" means an individual who has satisfactorily completed a course in eye enucleation taught by an ophthalmologist."

Section 2. Section 72-17-202, MCA, is amended to read:

"72-17-202. Persons who may become donees — permissible purposes of gift — nonliability. *(1)* The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(a) any hospital, surgeon, or physician for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

(b) any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science, or therapy;

(c) any bank or storage facility *licensed, accredited, or approved under the laws of any state* for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(d) any specified individual for therapy or transplantation needed by him.

(2) A physician, surgeon, technician trained in eye enucleation, hospital, bank or storage facility, or donee acting in good faith compliance with the provisions of this chapter is not liable in a civil action to any claimant who alleges that the claimant's authorization for use of the body or part was required."

Section 3. **Eye enucleations — technicians — qualifications.** (1) Eye enucleations for purposes of anatomical gifts may be performed:

(a) by a licensed physician or surgeon; or

(b) by a technician trained in eye enucleation.

(2) A course in eye enucleation acceptable under subsection (1) must include the anatomy and physiology of the eye, instruction in maintaining a sterile field during the enucleation procedure, and use of appropriate instruments and sterile procedures for removal and preservation of corneal tissue.

(3) Certification of satisfactory completion of a course in eye enucleation must be provided by the ophthalmologist who teaches the course. This certification qualifies a technician to perform eye enucleations for a period of 3 years from the date of completion of the course.

Section 4. **Approval of eye banks.** Any bank or storage facility that furnishes to the department written evidence of its membership and certification, and reports and recommendations for future compliance, granted by the eyebank association of America, is approved for receipt and storage of eye tissue for the term of such membership and certification and is eligible during such term to be a donee of eye tissue pursuant to 72-17-202(1)(c).

Section 5. **Codification instruction.** Sections 3 and 4 are intended to be codified as an integral part of Title 72, chapter 17, and the provisions of Title 72, chapter 17, apply to sections 3 and 4.

Approved April 6, 1983.

CHAPTER NO. 404

AN ACT PROVIDING THAT FOR PURPOSES OF AN ELECTION FOR CHANGING THE FORM OF LOCAL GOVERNMENT, AN ELECTION CONDUCTED IN NOVEMBER 3 YEARS EARLIER IS CONSIDERED TO BE 3 YEARS PRIOR TO A GENERAL ELECTION DATE; AMENDING SECTION 7-3-155, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-155, MCA, is amended to read:

"**7-3-155. Three-year moratorium.** *(1)* Unless the constitution requires otherwise, the electors of any unit of local government which has

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voted upon the question of changing the form of local government, charter, or consolidation plan or upon the question of amending the alternative form, charter, or consolidation plan may not vote on the question of changing or amending the form of local government for 3 years.

(2) For the purposes of this section general election dates are considered to be 1 year apart and may be used in computing the 3-year moratorium. No election on the question of changing an alternative form of a unit of local government may be challenged as failing to conform with the moratorium provisions of this section because 3 full calendar years may not have elapsed."

Approved April 6, 1983.

CHAPTER NO. 405

AN ACT TO REVISE THE LAW RELATING TO THE STAFF OF THE BOARD OF PUBLIC EDUCATION; AMENDING SECTION 20-2-122, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-2-122, MCA, is amended to read:

"**20-2-122. Executive secretary to board of public education — staff.** The board of public education may:

(1) *appoint an executive secretary* and employ *other persons within legislatively authorized appropriations*;

(2) prescribe the term, duties, and compensation of its *executive secretary*;

(3) provide office space for its *staff* to carry out *its* duties."

Approved April 6, 1983.

CHAPTER NO. 406

AN ACT TO CLARIFY AND PROPERLY DESIGNATE THE DEPARTMENT OF INSTITUTIONS AS ADMINISTRATOR OF BOTH THE ALCOHOL AND DRUG PROGRAMS IN THE STATE BY DEFINING AND USING THE TERM "CHEMICAL DEPENDENCY" WHERE APPROPRIATE; AMENDING SECTIONS 53-24-101, 53-24-103, 53-24-104, 53-24-204, 53-24-206, 53-24-207, 53-24-209 THROUGH 53-24-211, AND 53-24-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-101, MCA, is amended to read:

"**53-24-101. Legislative purpose.** It is the purpose of this chapter and the policy of this state to recognize *chemical dependency* as *a problem* affecting the health, safety, morals, economy, and general welfare of

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this state; to recognize *chemical dependency* as *a problem* subject to treatment; and to recognize the sufferer of *chemical dependency* as worthy of treatment and rehabilitation. It is the intent of this chapter to establish means whereby the appropriate resources of this state may be focused fully and effectively upon the *problem* of *chemical dependency* and utilized in implementing programs for the control and treatment of *this problem.*"

Section 2. Section 53-24-103, MCA, is amended to read:

"53-24-103. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who has a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.

(2) "Approved private treatment facility" means a private nonprofit agency receiving public funds (whose function is the treatment, rehabilitation, and prevention of *chemical dependency*) *and* meeting the standards prescribed in 53-24-208(1) and approved under 53-24-208.

(3) "Approved public treatment facility" means:

(a) a treatment agency operating under the direction and control of the department as a state agency and approved under 53-24-208; or

(b) a treatment agency operating under the direction and control of a local government and approved under 53-24-208.

(4) "Chemical dependency" means the use of any chemical substance, legal or illegal, which creates behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, welfare, or safety.

(5) "Department" means the department of institutions provided for in 2-15-2301.

(6) "Family member" is the spouse, mother, father, child, or member of the household of *a chemically dependent person* whose life has been affected by the actions of the *chemically dependent person* and *who* may require treatment.

(7) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(8) "Incompetent person" means a person who has been adjudged incompetent by the district court.

(9) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(10) "Prevention" has meaning on four levels; these are:

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(a) education to provide information to the school children and general public relating to *chemical dependency* treatment and rehabilitative services and to reduce the consequences of life experiences acquired by contact with *a chemically dependent person*;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

(11) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to *chemically dependent persons*, intoxicated persons, and family members."

Section 3. Section 53-24-104, MCA, is amended to read:

"53-24-104. Deposit of funds from federal or private sources with state treasurer. Funds available to the department from federal or private sources for use in *chemical dependency* prevention, treatment, and control programs shall be deposited with the state treasurer to the account of the department in the federal and private revenue fund."

Section 4. Section 53-24-204, MCA, is amended to read:

"53-24-204. Powers and duties of department. (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare an annual state plan for the delivery of treatment services;

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to *chemically dependent persons*;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of *chemical dependency* counselors;

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(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services; and

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for *chemically dependent* and intoxicated persons in or on parole from penal institutions."

Section 5. Section 53-24-206, MCA, is amended to read:

"53-24-206. Administration of financial assistance. (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of *chemical dependency* or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on *chemical dependency* or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax or the beer license tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved programs on a discretionary basis shall be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds shall be distributed to the counties for use by approved programs in the following manner:

(i) Eighty-five percent shall be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent shall be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism or related social problems."

Section 6. Section 53-24-207, MCA, is amended to read:

"53-24-207. Comprehensive program for treatment. (1) The department shall establish a comprehensive and coordinated program for the treatment of *chemically dependent persons*, intoxicated persons, and family members.

(2) The program shall include:

(a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

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(b) inpatient treatment;

(c) intermediate treatment;

(d) outpatient treatment; and

(e) follow-up services.

(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under 53-24-301 through 53-24-304.

(4) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities."

Section 7. Section 53-24-209, MCA, is amended to read:

"53-24-209. Rules for acceptance for treatment. The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of *chemically dependent persons*, intoxicated persons, and family members. In adopting the rules, the department shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient or intermediate treatment unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each person.

(5) Provision shall be made for a continuum of coordinated treatment services so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment."

Section 8. Section 53-24-210, MCA, is amended to read:

"53-24-210. Departmental reports to legislature. The department shall report to each legislative session on the status of the implemented chapter. This report or any part thereof may be included as the department's state plan for alcohol abuse and *chemical dependency*."

Section 9. Section 53-24-211, MCA, is amended to read:

"53-24-211. County plan to be submitted to department. (1) By January 1 of each year, each county must submit to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of *chemical dependency*.

(2) The plan must have been approved by the board of county commissioners and must contain information regarding existing nonprofit and

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local government programs within the county. The plan must also contain information regarding the current and future needs of the county for the treatment, rehabilitation, and prevention of *chemical dependency*.

(3) The department shall approve or disapprove the countywide plan. If the department disapproves a plan, the county may submit another plan to the department. In distributing funds to approved programs in a county, the department shall give consideration to the county plan.

(4) (a) After January 1 of each year, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if the county has not submitted a plan as required by subsection (1).

(b) After June 30 of each year, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if a county plan has not been approved by the department.

(5) The department may adopt rules regarding the submission, approval, and disapproval of plans."

Section 10. Section 53-24-306, MCA, is amended to read:

"53-24-306. Records of chemically dependent persons, intoxicated persons, and family members. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available information from patients' records for purposes of research into the causes and treatment of *chemical dependency*. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information."

Approved April 6, 1983.

CHAPTER NO. 407

AN ACT TO DESIGNATE THE GRIZZLY BEAR, URSUS ARCTOS HORRIBILIS, AS THE OFFICIAL ANIMAL OF THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State animal.** The grizzly bear, ursus arctos horribilis, as preferred by a vote of Montana school children, is the official Montana state animal.

Approved April 7, 1983.

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CHAPTER NO. 408

AN ACT TO ENSURE THAT PROPERTY FOUND WITH OR UPON A DECEDENT AND ANY SUICIDE NOTE WILL BE GIVEN TO DECEDENT'S PERSONAL REPRESENTATIVE, FAMILY, OR OTHER PERSON ENTITLED THERETO, EXCEPT WHEN THE PROPERTY OR NOTE IS CONSIDERED BY THE COUNTY ATTORNEY TO BE EVIDENCE OF A CRIME; REPEALING SECTION 44-3-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disposition of property of deceased — suicide note.** (1) Any property of a decedent, or any suicide note composed or purportedly composed by a decedent in the custody of the county coroner shall be held until such time as the county attorney establishes that it is not necessary to hold such property or note to determine the true cause of death, to assist any investigating agency, or to be used as evidence in any related criminal court action.

(2) For the purposes of this section, "investigating agency" means any county attorney, the state medical examiner, and any law enforcement agency of this state and any political subdivision of this state having jurisdiction of the death.

(3) When such property or note is no longer needed for evidentiary purposes, it shall be given, upon written request, to the personal representative of the decedent appointed under Title 72, or if no personal representative is appointed, to the decedent's family or whoever in the discretion of the county attorney should receive the property or the note.

Section 2. **Repealer.** Section 44-3-402, MCA, is repealed.

Approved April 7, 1983.

CHAPTER NO. 409

AN ACT TO REVISE THE PROVISIONS RELATING TO THE LEASING OF POWER EQUIPMENT BY CLASS A, B, C, AND D CARRIERS BY DELETING THE REQUIREMENT FOR SPECIFIC APPROVAL AND CERTIFICATION BY THE PUBLIC SERVICE COMMISSION; AMENDING SECTION 69-12-611, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-611, MCA, is amended to read:

"69-12-611. Leasing of power equipment. (1) All Class A, B, C, and D carriers subject to the jurisdiction of the commission may lease

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power equipment for the purpose of performing transportation movements within the state. The leasing of such power units must be in writing.

(2) All leases must contain:

(a) the full names and addresses of negotiating parties;

(b) a complete description of each vehicle involved;

(c) provision that the sole possession, responsibility, control, and direction of each vehicle and its driver resides with the lessee for the entire term of the lease;

(d) provision that the lessee assumes full responsibility for all regulatory fees;

(e) amount of compensation to be paid for use of the vehicle while under the lease and the method by which such compensation is determined;

(f) the renewal conditions of the lease, if any; and

(g) the term length of the lease.

(3) A copy of the lease must be maintained in each leased vehicle at all times. Each power unit so leased must display in a conspicuous place on both sides of such vehicle the identity and address of the lessor and lessee and the certificate number under which the power unit is operating.

(4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 7, 1983.

CHAPTER NO. 410

AN ACT ALLOWING A PERSON WHO OWNS REAL PROPERTY FOR THE PRIMARY PURSUIT OF BONA FIDE AGRICULTURAL INTERESTS TO PROVIDE OUTFITTING SERVICES FOR CONSIDERATION ON THAT PROPERTY WITHOUT A LICENSE; AMENDING SECTION 87-4-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-101, MCA, is amended to read:

"87-4-101. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "License year" means that period commencing January 1 and ending December 31 of the same year.

(2) "Nonresident" means a person other than a resident.

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(3) "Outfitter" means any person, *except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests*, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal.

(4) "Outfitters' council" means the Montana outfitters' council provided for in 2-15-3403.

(5) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.

(6) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(7) "Participant" means a person using the services offered by a license outfitter or professional guide."

Approved April 7, 1983.

CHAPTER NO. 411

AN ACT ALLOWING A DEFENDANT SENTENCED TO DEATH TO CHOOSE BETWEEN HANGING AND A LETHAL INJECTION; PROVIDING THAT THE WARDEN OF THE STATE PRISON SHALL PROVIDE THE PLACE, PERSON, AND IMPLEMENTS TO CARRY OUT THE EXECUTION; CHANGING THE LIST OF PERSONS VIEWING THE EXECUTION; EXEMPTING PERSONS ACTUALLY PERFORMING THE EXECUTION FROM PROFESSIONAL LICENSING REQUIREMENTS; AMENDING SECTIONS 37-3-103, 37-8-103, 45-3-109, 46-19-103, 46-19-202, AND 46-19-204, MCA; PROVIDING FOR APPLICATION TO DEATH SENTENCES IMPOSED BEFORE AND AFTER THE EFFECTIVE DATE OF THIS ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

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(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician's assistant in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law; *and*

(o) the execution of a death sentence pursuant to 46-19-103.

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(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 2. Section 37-8-103, MCA, is amended to read:

"37-8-103. Exemptions — limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent or hold herself or himself out to be a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian; *and*

(i) the execution of a death sentence pursuant to 46-19-103.

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana."

Section 3. Section 45-3-109, MCA, is amended to read:

"45-3-109. Execution of death sentence. A *person who* puts a person to death pursuant to a sentence of a court of competent jurisdiction

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is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence."

Section 4. Section 46-19-103, MCA, is amended to read:

"46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead *or, at the election of the defendant, by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice.*

(3) *The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (4), select the person to perform the execution and the warden or his designee shall supervise the execution.*

(4) *An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.*

(5) After the execution, the *warden shall* make a return upon the death warrant showing time, mode, and manner in which it was executed."

Section 5. Section 46-19-202, MCA, is amended to read:

"46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the *warden of the Montana state prison shall* execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution of the department of institutions for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of Warm Springs state hospital, the county prosecuting officer, or the defendant or his legal representative, determines after a

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hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the *warden must* be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged."

Section 6. Section 46-19-204, MCA, is amended to read:

"46-19-204. Proceedings following determination regarding pregnancy. If it is found by the inquiry that the woman is not pregnant, the *warden of the Montana state prison shall* execute the judgment. If it is found that the woman is pregnant, the *warden shall* suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment."

Section 7. **Applicability.** This act applies to death sentences whether first pronounced before or after its effective date. The legislature intends this act to apply retroactively under 1-2-109.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 7, 1983.

CHAPTER NO. 412

AN ACT AUTHORIZING THE MONTANA HIGHWAY COMMISSION TO DESIGNATE SUFFICIENCY LEVELS FOR APPORTIONMENT OF CONSTRUCTION FUNDS TO THE FEDERAL-AID PRIMARY SYSTEM; AUTHORIZING THE DEPARTMENT OF HIGHWAYS TO ALLOCATE FUNDS ACCORDINGLY; AMENDING SECTION 60-3-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-205, MCA, is amended to read:

"60-3-205. Apportionment of state funds to federal-aid primary highway system. (1) *Prior to the beginning of each biennium, the commission, referring to highway sufficiency ratings developed by the department, shall designate a level of sufficiency considered adequate and a lesser level of sufficiency considered critical, both to be used to compute the apportionment of construction funds for the federal-aid primary system during the succeeding biennium.*

(2) The department shall then compute the ratio*:*

(a) between the mileage *rated below adequate sufficiency* in each *financial* district and the total mileage *rated below adequate sufficiency* of the federal-aid primary system in the state*; and*

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(b) between the mileage rated at or below critical sufficiency in each financial district and the total mileage rated at or below critical sufficiency of the federal-aid primary system in the state.

(3) The department, *subject to the limitation provided in subsection (4),* shall then *distribute three-fourths of the* available state construction funds *for* the federal-aid primary system *among the financial districts according to the ratios computed in subsection (2)(a) and one-fourth of the available state construction funds for the federal-aid primary system among the financial districts according to the ratios computed in subsection (2)(b).*

(4) A financial district may not receive more than one-third of the total funds available for the federal-aid primary system in any biennium. If a financial district would receive more than one-third of the total funds available under the formula in subsection (3), its apportionment is limited to the one-third maximum and any excess funds it would have received must be redistributed among the other districts according to the formula."

Section 2. **Effective date.** This act is effective upon passage and approval.

Approved April 8, 1983.

CHAPTER NO. 413

AN ACT REVISING THE ALLOCATION OF FEDERAL FOREST RESERVE MONEY TO SCHOOL DISTRICTS; AMENDING SECTIONS 17-3-213, 20-9-331, 20-9-332, AND 20-9-335, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-213, MCA, is amended to read:

"17-3-213. Allocation to general road fund and countywide school levies. (1) The forest reserve funds so apportioned to each county shall be apportioned by the county treasurer in each county between the several funds as follows:

(a) to the general road fund, 66 ⅔% of the total amount received;

(b) to the *following countywide school levies,* 33 ⅓% of the total sum received*:*

(i) the annual basic tax levy for elementary schools provided for in 20-9-331;

(ii) the annual special tax for high schools provided for in 20-9-333;

(iii) the high school transportation fund provided for in 20-10-143;

(iv) the elementary teacher retirement and social security fund provided for in 20-9-501;

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(v) the high school teacher retirement and social security fund provided for in 20-9-501.

(2) The apportionment of money to the funds provided for under subsection (1)(b) shall be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under this section is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (1)(b).

(3) In counties wherein special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 ⅔% of the total amount received for the general road fund to such special road district or districts within the county based upon the percentage that the total area of such road district bears to the total area of the entire county."

Section 2. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 25 mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (2)(a) through (2)(f) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy of 25 mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

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(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all *money* paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section; and

(e) any federal or state *money* distributed to the county as payment in lieu of the property taxation established by the county levy required by this section."

Section 3. Section 20-9-332, MCA, is amended to read:

"20-9-332. Fines and penalties proceeds for elementary county equalization. All fines and penalties collected under the provisions of this title shall be collected by the action of a court of competent jurisdiction and shall be paid into the county elementary equalization fund as provided by 20-9-331(2)*(c)*. In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, the following reports shall be made to the county superintendent of the county in which each court or justice of the peace shall have jurisdiction:

(1) during the month of September, each justice of the peace shall report all fines imposed and collected during the preceding year, indicating the type of violation and the date of collection; and

(2) at the close of each term, the clerk of each district court shall report all fines imposed and collected during the term, indicating the type of violation and the date of collection."

Section 4. Section 20-9-335, MCA, is amended to read:

"20-9-335. Formula for apportionment of county equalization moneys. (1) After making such deductions prescribed in 20-9-334, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several public elementary districts of the county and in the basic special tax for high schools account to the several public secondary districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

(a) determine the percentage that the county equalization moneys available for the support of the foundation programs of the public elementary districts in the county is of the total amount of the foundation programs of all public elementary districts;

(b) multiply the foundation program amount of each public elementary district by the percentage determined in subsection (1)(a) above to determine the portion of the county equalization moneys available to each public elementary district.

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(2) The above procedure shall also be applied for public secondary districts.

(3) No territory situated within a county shall be excluded from the apportionment of the county equalization moneys under this section solely because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

(4) When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of 20-9-331(2)*(d)* or 20-9-333(2)(a).

(5) The county equalization moneys apportioned under these procedures shall constitute the first source of revenue in calculating the financing of the public elementary and secondary district foundation program. The county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes."

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved April 8, 1983.

CHAPTER NO. 414

AN ACT TO AMEND THE PROPORTIONAL VEHICLE REGISTRATION LAW; TO CHANGE THE DEFINITION OF THE TERM "PRECEDING YEAR"; TO REVISE THE APPLICATION REQUIREMENTS; AND TO CHANGE THE PROCEDURE FOR THE WITHDRAWAL OF FLEET VEHICLES; AMENDING SECTIONS 61-3-712, 61-3-721, AND 61-3-725, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-712, MCA, is amended to read:

"61-3-712. Definitions. As used in 61-3-711 through 61-3-733 the following definitions apply:

(1) "Apportionable vehicle" means a vehicle which is used or intended for use in more than one jurisdiction and used for the transportation of persons for hire, compensation, or profit, or designed or used primarily for the transportation of property.

(2) "Fleet" means one or more apportionable vehicles.

(3) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of

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Puerto Rico, a foreign country, and a state or province of a foreign country.

(4) "Legal residence" means a jurisdiction where the person lives or conducts his business. This residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in 61-3-711 through 61-3-733 shall be confined to the definition given, and shall not be confused with the word "domicile". This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) "Preceding year" means a period of 12 consecutive months fixed by the department of highways, which period shall be within *18* months immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department in fixing the period shall make it conform to the terms, conditions, and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

(6) (a) "Properly registered", as applied to place of registration, means:

(i) the jurisdiction where the person registering the vehicle has his legal residence;

(ii) in the case of an apportionable vehicle, the jurisdiction in which it is registered if the enterprise in which the vehicle is used has a place of business therein and if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from the place of business and the vehicle has been assigned to the place of business; or

(iii) in the case of an apportionable vehicle, the jurisdiction where because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration the vehicle has been registered as required by that jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the highway commission shall make the final determination, but in making the determination, the commission may confer with departments of the other jurisdictions affected."

Section 2. Section 61-3-721, MCA, is amended to read:

"61-3-721. Proportional registration of fleet vehicles, application, fee formula, and payment. (1) An owner engaged in operating one or more fleets may, instead of registration of vehicles under other sections of this title, register and license each fleet for operation in this state by filing an application with the department which shall contain the information pertinent to vehicle registration *that is required by* the department.

(2) The application for each fleet may be accompanied by a fee payment computed as follows:

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(a) divide in-state miles by total fleet miles *as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733*;

(b) determine the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and part 2 of chapter 10, and the property taxes which are due on the fleet;

(c) multiply the sum obtained under subsection (2)(b) by the fraction obtained under subsection (2)(a).

(3) Applications submitted with fees may be recomputed by the department and a statement furnished showing the overpayment or balance due.

(4) Applications submitted without fees shall be computed by the department and a statement furnished showing the amount of fees due."

Section 3. Section 61-3-725, MCA, is amended to read:

"61-3-725. Withdrawal of fleet vehicles — procedure, credits, and accounting. *(1)* If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of the fleet shall notify the department of highways of that fact on forms prescribed by the department. The department may require the owner to surrender proportional registration cards and other identification devices which have been issued with respect to that vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to that vehicle shall be credited to the proportional registration account of the owner. This unused portion shall equal the amount paid with respect to the vehicle when it was first proportionally registered in the registration year, reduced by one-twelfth of the total annual gross vehicle weight fee of the vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the department. This credit shall be applied against liability for additional fees due during the registration year or for additional fees due upon audit under 61-3-728. If a credit is less than $5, it may not be made or entered. In no event may the amount be credited against fees other than those for the registration year, nor may any amount be subject to refund.

(2) If the owner replaces a vehicle withdrawn from the fleet at the same time as the withdrawal and the replacement vehicle is of the same or of a lesser weight category than the one withdrawn, the gross vehicle weight fees are transferable to the replacement vehicle. If the transfer is to a smaller vehicle, there may be no credit given or entered."

Approved April 8, 1983.

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CHAPTER NO. 415

AN ACT TO ALLOW A MUNICIPAL COURT JUDGE AND HIS LAW PARTNERS TO PRACTICE LAW BEFORE ANY COURT OF THIS STATE EXCEPT THE MUNICIPAL COURT OF THAT JUDGE; AMENDING SECTIONS 3-1-601, 3-1-603 AND 3-1-604, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-601, MCA, is amended to read:

"3-1-601. Certain officers not to practice law or administer estates. (1) *Except as provided in 3-1-604, no* justice or judge of a court of record or clerk of any court may practice law in any court in this state or act as attorney, agent, or solicitor in the prosecution of any claim or application for lands, pensions, or patent rights or other proceedings before any department of the state or general government or any court of the United States during his continuance in office.

(2) Neither the court administrator nor any assistant may practice law in any of the courts of this state while holding his position.

(3) No justice or judge of a court of record may act as administrator or executor of any estate for compensation."

Section 2. Section 3-1-603, MCA, is amended to read:

"3-1-603. No judicial officer of court of record to have partner practicing law. *(1) Except as provided in subsection (2), no* judicial officer of a court of record may have a partner acting as attorney or counsel in any court of this state.

(2) A partner of a municipal court judge may act as attorney or counsel in any court of this state except the municipal court of his partner."

Section 3. Section 3-1-604, MCA, is amended to read:

"3-1-604. Restrictions on municipal court judges. No municipal court judge may practice law *before his own municipal court* or hold office in a political party during his term of office."

Approved April 8, 1983.

CHAPTER NO. 416

AN ACT PROVIDING A TERM OF 4 YEARS FOR APPOINTED CITY JUDGES; AMENDING SECTION 3-11-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-11-201, MCA, is amended to read:

"3-11-201. Term of office. (1) An elected *or appointed* city judge shall hold office for a term of 4 years and until the qualification of his successor.

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(2) A justice of the peace designated to act as city judge for a town under 3-11-205 shall serve as city judge for the duration of his term as justice of the peace unless the council terminates the designation."

Approved April 8, 1983.

CHAPTER NO. 417

AN ACT REQUIRING THE PILOT OF AN AIRCRAFT TO FILE A FLIGHT PLAN ON CERTAIN LONG-DISTANCE VFR FLIGHTS ORIGINATING AT A MONTANA PUBLIC AIRPORT; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF COMMERCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Flight plan required — penalty.** (1) The pilot of each flight carrying passengers and originating at a Montana public airport and to be flown under visual flight rules over a distance greater than 250 nautical miles is required to file a flight plan with the federal aviation administration.

(2) The department may adopt rules necessary to implement the provisions of this section.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 67, chapter 3, and the provisions of Title 67, chapter 3, apply to section 1.

Approved April 8, 1983.

CHAPTER NO. 418

AN ACT TO REVISE THE PERMISSIVE AMOUNT AND THE PERMISSIVE LEVY ALLOWED SCHOOL DISTRICTS; AND TO INCREASE THE BASIC COUNTY LEVIES IN SUPPORT OF LOCAL AND STATE EQUALIZATION OF THE FOUNDATION PROGRAMS OF THE ELEMENTARY AND HIGH SCHOOL DISTRICTS; AMENDING SECTIONS 20-9-331, 20-9-333, AND 20-9-352, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of *28* mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state

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foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (2)(a) through (2)(f) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy *prescribed by this section* produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal forest reserve funds distributed to a county and designated for the common school fund under the provisions of 17-3-213;

(b) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(c) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(d) all moneys which are paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(e) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section; and

(f) any federal or state moneys distributed to the county as payment in lieu of the property taxation established by the county levy required by this section."

Section 2. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of *17* mills on the dollar of the taxable value of all taxable property within the county for the purposes of

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local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy *prescribed by this section* produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for deposit of the proceeds from the levy established in this section; and

(b) any federal or state moneys distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section."

Section 3. Section 20-9-352, MCA, is amended to read:

"20-9-352. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with any biennial appropriation by the legislature for this purpose.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 6 mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 6 or by

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using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund according to the provisions of 20-9-351 and subsection (3) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding *4* mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by *4* or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund according to the provisions of 20-9-351 and subsection (3) of this section. The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account [program] for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium.

(3) Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid earmarked revenue fund if revenues in that fund are insufficient to meet foundation program requirements."

Section 4. **Effective date.** This act is effective July 1, 1983.

Approved April 9, 1983.

CHAPTER NO. 419

AN ACT AMENDING SECTION 22-3-107, MCA, TO ASSIGN THE MONTANA HISTORICAL SOCIETY THE DUTY OF PUBLISHING A ROADSIDE HISTORY OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-3-107, MCA, is amended to read:

"22-3-107. Authority of board. The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a vice-president, and a secretary;

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(2) to adopt bylaws for their own government and to make rules, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix his salary, and prescribe his duties and responsibilities;

(4) to create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from such sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. Moneys received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(10) to collect, assemble, preserve, and display, where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular and generally of the Pacific Northwest, Northern Rocky Mountain, and Northern Great Plains regions and of the United States of America when pertinent;

(11) to procure from pioneers, early settlers, and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development, and society;

(12) to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military, and pioneer artifacts and implements;

(13) to collect and preserve such natural history objects as fossils, plants, minerals, and animals;

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(14) to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research;

(15) to promote the study of Montana history by lectures and publications;

(16) to publish a roadside history of Montana with maps, photographs, and text that will enable tourists, citizens, and students to understand the history of the countryside seen from the state's main roads;

(17) to generally foster and encourage the fine arts and cultural activities in Montana;

(18) to receive for and on behalf of the state, by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere;

(19) to microfilm papers or documents in danger of disappearance or injury; and

(20) to coordinate the administration of the historic records network established in 22-3-211."

Approved April 9, 1983.

CHAPTER NO. 420

AN ACT TO DEFINE THE MOURNING DOVE AS A MIGRATORY GAME BIRD; RESTRICTING THE OPEN HUNTING SEASON; AMENDING SECTION 87-2-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-101, MCA, is amended to read:

"87-2-101. Definitions. As used in this chapter and chapter 3, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Angling" or "fishing" means the taking of or attempting to take fish by hook and single line or single rod, in hand or within immediate control.

(2) "Closed season" means the time during which game birds, fish, and game and fur-bearing animals may not be lawfully taken.

(3) "Commission" means the state fish and game commission.

(4) "Fur-bearing animals" means marten or sable, otter, muskrat, fisher, mink, bobcat, lynx, wolverine, northern swift fox, and beaver.

(5) "Game animals" means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

(6) "Game fish" means all species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion

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(sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel, and muskellunge); all species of the genus micropterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

(7) "Migratory game birds" means waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown and sandhill; rails, including coots; wilson's snipes or jacksnipes; *and mourning doves provided, however, that the open season on mourning doves shall be restricted to the open season on upland game birds as defined in subsection (12) below.*

(8) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other animal not otherwise legally classified by statute or regulation of this state.

(9) "Open season" means the time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

(10) "Person" means individuals, associations, partnerships, and corporations.

(11) "Predatory animals" means coyote, weasel, skunk, and civet cat.

(12) "Upland game birds" means sharptailed grouse, blue grouse, spruce (Franklin) grouse, prairie chicken, sage hen or sage grouse, ruffed grouse, quail, pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

(13) "Wild buffalo" means buffalo or bison which have not been reduced to captivity."

Approved April 9, 1983.

CHAPTER NO. 421

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V, SECTION 14, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE CONGRESSIONAL DISTRICTS IN MONTANA BE REDISTRICTED WITHIN 90 DAYS AFTER THE OFFICIAL FINAL DECENNIAL CENSUS FIGURES ARE AVAILABLE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article V, section 14, of the Constitution of the State of Montana is amended to read:

"Section 14. Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

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(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative districts *and a plan for redistricting the state into congressional districts.* The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(4) The commission shall submit its plan *for legislative districts* to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan *for legislative districts* with the secretary of state and it shall become law.

(5) Upon filing both plans, the commission is dissolved."

Section 2. **Effective date.** If approved by the electorate, this amendment becomes effective October 1, 1985.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 6, 1984, by printing on the ballot the full title of this act and the following:

☐ FOR requiring the congressional redistricting plan to be finalized within 90 days after official final census data are available and eliminating provisions for legislative comment.

☐ AGAINST requiring the congressional redistricting plan to be finalized within 90 days after official final census data are available and eliminating provisions for legislative comment.

Section 4. **Coordination instruction.** If House Bill 629 introduced in the 48th legislature is not passed and approved, the date "November 6, 1984" in section 3 of this act is changed to "November 8, 1983".

CHAPTER NO. 422

AN ACT AUTHORIZING LOCAL GOVERNMENTS TO ISSUE SPECIAL AND RURAL IMPROVEMENT DISTRICT BONDS WITHOUT REVOLVING FUND BACKING; AMENDING SECTIONS 7-12-2181 THROUGH 7-12-2183, 7-12-2185, 7-12-2186, 7-12-4221 THROUGH 7-12-4223, 7-12-4225, AND 7-12-4227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2181, MCA, is amended to read:

"7-12-2181. Creation of rural improvement district revolving fund. The board of county commissioners of any county in the state which

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may create any rural special improvement district or districts for any purpose *may* (in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein and the interest thereon as it becomes due) create, establish, and maintain by resolution a fund to be known and designated as the rural special improvement district revolving fund. *Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and the interest thereon have been fully paid and discharged.*"

Section 2. Section 7-12-2182, MCA, is amended to read:

"**7-12-2182. Sources of money for revolving fund.** (1) For the purpose of providing funds for such revolving fund the board of county commissioners:

(a) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be considered and shall be loans from such general fund to the revolving fund; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of such fund. However, a tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding rural special improvement district bonds and warrants *secured thereby*. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants *secured thereby*.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district *secured by the revolving fund* or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-2183 shall, by order of the board, be transferred to the revolving fund. After all the bonds and warrants *secured by the revolving fund* issued on any rural special improvement district have been fully paid, all money remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund."

Section 3. Section 7-12-2183, MCA, is amended to read:

"**7-12-2183. Loan from revolving fund to meet payments on bonds and warrants or to make emergency repairs.** (1) Whenever any rural special improvement district bond or warrant *secured by the revolving fund and* or any interest thereon shall become due and payable and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund. Thereupon, such bond or warrant or such interest thereon shall be paid from the

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money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) Whenever any rural special improvement district maintenance fund does not have sufficient money to pay the cost of emergency repairs, the board of county commissioners by order or resolution may loan money from the revolving fund to such district maintenance fund. Such loan shall be repaid in annual installments in not more than 3 years. In no event may the loans interfere with the payments of bonds or warrants. The loan shall be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are not sufficient funds in the revolving fund to make the loans without interfering with the payment of bonds or warrants *secured thereby*, then the loans may not be made."

Section 4. Section 7-12-2185, MCA, is amended to read:

"7-12-2185. Covenants to utilize revolving fund. (1) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof, to the extent that funds are available; and

(b) to provide funds for such revolving fund pursuant to the provisions of 7-12-2182 by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the board may so agree to and undertake, subject to the maximum limitations imposed by 7-12-2182.

(2) The undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered or any interest thereon remain unpaid.

(3) In lieu of the undertakings and agreements set forth in subsection (1), the board of county commissioners may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund shall not secure the bonds or warrants and that the bonds or warrants shall be payable solely from the district fund created therefor and shall have no claim against the revolving fund."

Section 5. Section 7-12-2186, MCA, is amended to read:

"7-12-2186. Utilization of excess money in revolving fund. Whenever there is in the revolving fund an amount in excess of 5% of the then-outstanding rural special improvement district bonds and warrants *secured thereby* and the board considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants *secured thereby* or interest thereon, the board may order the amount the board considers greater than the amount necessary or any part thereof transferred to the general fund of the county."

Section 6. Section 7-12-4221, MCA, is amended to read:

"7-12-4221. Creation of special improvement district revolving fund. The council or commission of any city or town which has heretofore created or may hereafter create any special improvement district or

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districts for any purpose may in its discretion create, establish, and maintain by ordinance a fund to be known and designated as the special improvement district revolving fund in order to secure prompt payment of any special improvement district bonds or sidewalk, curb, and alley approach warrants issued in payment of improvements made therein and the interest thereon as it becomes due. *Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and interest thereon have been fully paid and discharged.*"

Section 7. Section 7-12-4222, MCA, is amended to read:

"**7-12-4222. Sources of money for revolving fund.** (1) For the purpose of providing funds for such revolving fund the city or town council:

(a) (i) may, in its discretion and from time to time, transfer to the revolving fund from the general fund of the city or town such amount or amounts as may be deemed necessary, which amount or amounts so transferred shall be deemed and considered and shall be loans from such general fund to the revolving fund; and

(ii) may include in the cost of the improvement to be defrayed from the proceeds of the bonds or warrants an amount up to 5% of the principal amount of the bonds or warrants and deposit it in the revolving fund upon receipt of such proceeds; and

(b) shall, in addition to such transfer or transfers from the general fund or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such city or town as shall be necessary to meet the financial requirements of such fund. However, a tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding special improvement district bonds and warrants *secured thereby*. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding special improvement district bonds and warrants *secured thereby*.

(2) Whenever there shall be money in the district fund which is not required for payment of any bond or warrant of such district *secured by the revolving fund* or of interest thereon, so much of such money as may be necessary to pay the loan provided for in 7-12-4223 shall by order of the council be transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants *secured by the revolving fund* have been fully paid, all money remaining in such district fund shall by order of the council be transferred to and become part of the revolving fund."

Section 8. Section 7-12-4223, MCA, is amended to read:

"**7-12-4223. Loans from revolving fund to meet payments on bonds and warrants.** Whenever any special improvement district bond or sidewalk, curb, and alley approach warrants *which are secured by the revolving fund* or any interest thereon shall be due and payable and there

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shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the council, be loaned by the revolving fund to such district fund. Thereupon, such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require."

Section 9. Section 7-12-4225, MCA, is amended to read:

"7-12-4225. Covenants to utilize revolving fund. (1) In connection with any public offering of special improvement district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:

(a) to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available;

(b) to provide funds for such revolving fund pursuant to the provisions of 7-12-4222(1) by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the city or town council may so agree to and undertake, subject to the maximum limitations imposed by 7-12-4222(1).

(2) The undertakings and agreements referred to in subsection (1) shall be binding upon said city or town so long as any of said special improvement district bonds or sidewalk, curb, and alley approach warrants so offered or any interest thereon remain unpaid.

(3) In lieu of the undertakings and agreements set forth in subsection (1), the city or town council may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund shall not secure the bonds or warrants and that the bonds or warrants shall be payable solely from the district fund created therefor and shall have no claim against the revolving fund."

Section 10. Section 7-12-4227, MCA, is amended to read:

"7-12-4227. Utilization of excess money in revolving fund. Whenever there is an amount in the revolving fund in excess of the amount deposited in the revolving fund under 7-12-4169(2) and in excess of 5% of the outstanding special improvement district bonds and warrants and the council considers any part of the excess to be greater than the amount necessary for payment or redemption of maturing bonds or warrants *secured thereby* or interest thereon, the council may:

(1) by vote of all of its members at a meeting called for that purpose, order the amount of the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants *secured thereby* or interest thereon or any part thereof transferred to the general fund of such city or town; or

(2) use the excess that is greater than the amount necessary for the payment or redemption of maturing bonds or warrants *secured thereby* or interest thereon or any part thereof for the purchase of property at sales

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for delinquent taxes or assessments, or both, or property which may have been struck off or sold to the county for delinquent taxes or assessments, or both, and against which property there then be any unpaid assessment for special improvements on account whereof there are outstanding special improvement district bonds or warrants of the city or town."

Approved April 11, 1983.

CHAPTER NO. 423

AN ACT VESTING THE OWNER OF CONTIGUOUS PROPERTY WITH ANY INTEREST ABANDONED BY THE STATE IN PROPERTY ACQUIRED FOR ESTABLISHMENT OF A HIGHWAY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Abandoned highway property — title vests in contiguous owner.** (1) Upon abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or his successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) The interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of such interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property abutting upon the abandoned interest to the center of the abandoned interest; and

(b) if the owners of the contiguous property on each side of the abandoned interest are one and the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell such interest.

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(5) The interest acquired by a contiguous property owner under subsection (3) is conditioned upon the use of the property for agricultural or noncommercial purposes. If the property is used for commercial purposes or for purposes of future subdivision or other similar development, the property shall revert to the state for sale pursuant to Title 60, chapter 4, part 2. This restriction applies to all subsequent holders of title to the property.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 60, chapter 4, part 2, and the provisions of Title 60, chapter 4, part 2, apply to section 1.

Approved April 11, 1983.

CHAPTER NO. 424

AN ACT TO ESTABLISH A FLATHEAD BASIN COMMISSION TO COORDINATE MONITORING OF THE QUALITY AND CONDITIONS OF FLATHEAD LAKE AND THE NATURAL RESOURCES WITHIN THE FLATHEAD BASIN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Flathead Lake is the largest natural body of fresh water in the continental United States west of the Mississippi River and is a significant natural resource of value statewide and in the Northwestern region of the United States; and

WHEREAS, research undertaken as part of the Flathead River basin environmental impact study demonstrates that the quality of the Flathead Lake aquatic environment is vulnerable to and affected by all forms of land use and resource development within the Flathead basin; and

WHEREAS, even though the Flathead Lake aquatic environment is of excellent quality, the cumulative impact of a wide variety of resource development activities poses a threat to the aquatic environment of the Flathead basin; and

WHEREAS, protection of this natural resource is complicated by overlapping and potentially conflicting international, state, provincial, tribal, and local jurisdictional interests and responsibilities, which require awareness, coordinated effort, shared responsibility, and devotion to the naturalness of the basin by each land and water management entity with responsibility in the basin.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Flathead Basin Commission Act of 1983".

Section 2. **Purpose.** The purpose of the Flathead basin commission is to protect the existing high quality of the Flathead Lake aquatic environment; the waters that flow into, out of, or are tributary to the lake; and the natural resources and environment of the Flathead basin.

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Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Aquatic resources" means all beneficial uses of water, including but not limited to water quality and water supply; recreational, scenic, and aesthetic values; and fish, wildlife, and other organisms.

(2) "Commission" means the Flathead basin commission established in [section 4].

(3) "Flathead basin" means all land and water areas the water from which drains into Flathead Lake or its tributaries.

Section 4. **Flathead basin commission — membership — compensation.** (1) There is a Flathead basin commission.

(2) The commission consists of 15 members selected as follows:

(a) four members appointed by the governor from industrial, environmental, and other groups affected by [this act], one of whom must be on the governor's staff and who also serves as the executive director;

(b) one member who shall be the commissioner of state lands or his designee;

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior national park service, regional director for the Rocky Mountain region;

(h) five ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia, the regional administratior of the United States environmental protection agency, the administrator of the Bonneville Power Administration, the chief of engineers of the United States army corps of engineers, and the holder of a license issued for the Flathead project under the Federal Power Act.

(3) The commissioners shall serve without pay. Commissioners, mentioned in section 4(2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the governor's office for administrative purposes only.

Section 5. **Term of appointment — quorum — vacancy — chairman — vote.** (1) The commission members shall serve staggered 4-year terms.

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(2) A majority of the membership, other than ex officio members, constitutes a quorum of the commission.

(3) A vacancy on the commission must be filled in the same manner as regular appointments, and the member so appointed shall serve for the unexpired term to which he is appointed.

(4) The commission shall select a chairman from among its members. The chairman may make motions and vote.

(5) A favorable vote of at least a majority of all members, except ex officio members, of the commission is required to adopt any resolution, motion, or other decision of the commission.

Section 6. **Commission staff and office location.** (1) The executive director of the commission shall be compensated on a pro rata basis from commission funds, calculated upon the time he is required by the governor to serve the commission.

(2) An office for the commission may be established at a community located in the basin, and sufficient and appropriate staff must be assigned to serve the commission.

Section 7. **Duties of the commission.** Duties of the commission are:

(1) to monitor the existing condition of natural resources in the basin and coordinate development of an annual monitoring plan. This plan must involve a cooperative strategy among all land and water management agencies within the Flathead basin and identify proposed and needed monitoring which emphasizes but is not limited to the aquatic resources of the Flathead basin.

(2) to encourage close cooperation and coordination between federal, state, provincial, tribal, and local resource managers for establishment of compatible resource development standards, comprehensive monitoring, and data collection and interpretation;

(3) to encourage and work for international cooperation and coordination between the state of Montana and the Province of British Columbia concerning the undertaking of natural resource monitoring and use of consistent standards for management of resource development activities throughout the North Fork Flathead River drainage portion of the Flathead basin;

(4) to encourage economic development and use of the basin's resources to their fullest extent without compromising the present high quality of the Flathead basin's aquatic environment;

(5) to, in the discretion of the commission, undertake investigations of resource utilization and hold public hearings concerning the condition of Flathead Lake and Flathead basin;

(6) to submit a biennial report to the governor and the appropriate committees of the legislature that includes:

(a) a summary of information gathered in fulfillment of its duties under this section;

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(b) information on monitoring activities within the Flathead basin concerning the condition of the basin's natural resources, with particular emphasis on Flathead Lake;

(c) the identification of land use and land development trends in the Flathead basin;

(d) any recommendations the commission considers appropriate for fulfillment of its duties and for continued preservation of the Flathead basin in the present high quality of its aquatic resources; and

(e) an accounting of all money received and expended, by source and purpose, for the period since the last report; and

(7) to meet at least semiannually within the Flathead basin, alternating the meeting site between the cities of Kalispell and Polson.

Section 8. **Commission authority.** (1) The commission may make recommendations to the legislature and the governor and to federal, tribal, provincial, and local agencies for maintenance and enhancement of the quality of natural resources of the Flathead basin.

(2) Subject to appropriation by the legislature, the commission may receive and expend donations, gifts, grants, and other money necessary to fulfill its duties.

Section 9. **Establishment of account.** There is established in the federal and private revenue fund a Flathead basin commission account. Money received by the Flathead basin commission under [section 8] and such other funds as are designated or appropriated for its use must be deposited in the account.

Section 10. **Special county government authority.** The governing body of any county within or bordering upon the Flathead basin may allocate to the Flathead basin commission a portion of any money available from coal severance tax allocations or other sources and designated for planning activities.

Section 11. **Cooperation with other agencies and organizations.** To fulfill its duties, the commission shall develop and maintain cooperative programs with federal, state, provincial, tribal, and local agencies or organizations that are responsible for natural resource management and monitoring in the Flathead basin. Participating federal and provincial agencies must be requested to provide adequate funds to participate on the commission and to monitor resources within their areas of responsibility.

Section 12. **Initial terms of commission members.** Five members of the original commission shall serve 2-year terms, thereby establishing staggered terms. Those members serving 2-year terms must be selected by lot at the first commission meeting.

Section 13. **Effective date.** This act is effective July 1, 1983.

Approved April 11, 1983.

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CHAPTER NO. 425

AN ACT AMENDING SECTION 19-5-103, MCA, TO REQUIRE A JUDGE OR JUSTICE WHO RETIRES VOLUNTARILY AFTER 8 YEARS OF SERVICE TO ASSIST THE SUPREME COURT, A DISTRICT COURT, OR A WATER COURT UPON REQUEST OF THE SUPREME COURT OR THE CHIEF JUSTICE OF THE SUPREME COURT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-103, MCA, is amended to read:

"**19-5-103. Call of retired judge for duty.** (1) Every judge or justice *who has voluntarily retired after 8 years of service* shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court, any district court, or any water court under such directions as the supreme court may give, including the examination of the facts, cases, and authorities cited, and the preparation of opinions for and on behalf of the supreme court, district court, or water court, or to serve as water judge. The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court. Such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases insofar as not inconsistent with the constitution of the state.

(2) Such retired judge or justice, when called to service as herein provided, shall be reimbursed for his actual expenses, if any, in responding to such call. In addition, for each day of temporary service a retired justice or judge is entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial position in which the temporary service is rendered minus an amount equal to one-twentieth of the monthly retirement allowance the retired justice or judge is receiving, *if any*, for each day of service rendered."

Approved April 11, 1983.

CHAPTER NO. 426

AN ACT TO PROVIDE A PROCEDURE FOR RESTITUTION TO VICTIMS OF CRIMES BY THE CRIMINAL OFFENDERS AND A PROCEDURE UPON DEFAULT IN PAYMENT OF RESTITUTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Condition of restitution.** As provided in 46-18-201, a sentencing court may require an offender to make restitution to any victim of the offense.

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Section 2. **Investigation and report of victim's loss.** (1) Whenever the court believes that restitution may be a proper condition of a deferred or suspended sentence or the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender's financial resources and future ability to pay restitution; and

(b) documentation of the victim's pecuniary loss submitted by the victim.

(2) Where no presentence report is authorized or requested, the court may receive evidence of the offender's ability to pay and the victim's loss at the time of sentencing.

Section 3. **Definition.** For purposes of [sections 1 through 9], the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) "Victim" means:

(a) a person who suffers loss of property, bodily injury, or death as a result of:

(i) criminally injurious conduct; or

(ii) his good faith effort to prevent criminally injurious conduct;

(b) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for his pecuniary loss.

Section 4. **Type and time of payment — defenses.** (1) The court shall specify the amount, method, and time of payment to the victim and may permit payment in installments. The court may not establish a payment schedule extending beyond the period for which the sentence has been suspended or deferred under 46-18-201.

(2) In determining the amount, method, and time of payment, the court shall consider the financial resources and future ability of the offender to pay. The court may provide for payment to a victim up to but not in excess of the pecuniary loss caused by the offense. The offender may assert any defense that he could raise in a civil action for the loss sought to be compensated by the restitution order.

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Section 5. **Supervision of payment.** The court may order a probation officer, restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment.

Section 6. **Waiver or modification of payment.** An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that he will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition, amount, method, or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making restitution. The court may extend the restitution schedule, but not beyond the period for which the sentence has been suspended or deferred under 46-18-201.

Section 7. **Default.** (1) If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why he should not be confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and place for a hearing or, if he fails to appear as ordered, issue a warrant for his arrest. The order or warrant must be accompanied by written notice of the offender's right to a hearing as provided in 46-18-203.

(2) If the court finds that the offender's default was attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering the order, may at any time, for good cause shown, reduce the term of confinement and waive satisfaction of the restitution order.

(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment thereof, the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments.

Section 8. **Rights of crime victims' compensation account.** (1) Whenever a victim is paid from the crime victims' compensation account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the crime victims' compensation account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction which is part of the same continuous scheme of criminal activity of an offender.

Section 9. **Civil actions by victim.** (1) [Sections 1 through 9 do] not limit or impair the right of a victim to sue and recover damages from the offender in a civil action.

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(2) The findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action.

(3) Any restitution paid by the offender to the victim must be set off against any pecuniary loss awarded to the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall determine the amount of any setoff asserted by the defendant under this section.

Section 10. **Codification instruction.** Sections 1 through 9 are intended to be codified as an integral part of Title 46, chapter 18, part 2, and the provisions of Title 46 apply to sections 1 through 9.

Approved April 11, 1983.

CHAPTER NO. 427

AN ACT TO ESTABLISH QUALIFICATIONS FOR PERSONS WHO REPRESENT THEMSELVES AS DIETITIANS OR REGISTERED DIETITIANS; TO PROHIBIT PERSONS WHO DO NOT MEET THE QUALIFICATIONS FROM REPRESENTING THEMSELVES AS SUCH; TO PROVIDE A PENALTY FOR VIOLATION; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Authorized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of health and environmental sciences as provided in 2-15-2101.

Section 2. **Dietitian — qualifications.** No person may use, in connection with his name or place of business, the term "dietitian" or represent in any way that he is a dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "dietitian" by an authorized agency; or

(2) (a) is 18 years of age or older;

(b) has satisfactorily completed appropriate academic requirements for the field of dietetics and related disciplines;

(c) has received a baccalaureate or higher degree in dietetics or a related field from a college or university accredited by the Northwestern association of schools and colleges; and

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(d) has satisfactorily completed a program of supervised clinical experience of not less than 6 months in length that is designed to train entry-level dietitians through instruction and assignments in a clinical setting. The program must meet minimum requirements established by the department.

Section 3. **Registered dietitian — qualifications.** No person may use, in connection with his name or place of business, the term "registered dietitian" or represent in any way that he is a registered dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "registered dietitian" by an authorized agency; or

(2) (a) has fulfilled all the requirements set forth in subsection (2) of [section 2];

(b) has satisfactorily completed an examination for registered dietitians administered by an authorized agency; and

(c) has satisfactorily completed, from time to time, such continuing education requirements as may be established by an authorized agency.

Section 4. **Rules.** The department may adopt rules in accordance with the Montana Administrative Procedure Act to implement [this act]. The rules may adopt standards, consistent with [this act], promulgated by an authorized agency relating to academic, experience, and training requirements.

Section 5. **Violation — penalty.** A person who violates [this act] or rules adopted under [this act] is guilty of a misdemeanor and is punishable by a fine not to exceed $500.

Section 6. **Remedies cumulative.** Remedies provided under [this act] are in addition to any other civil or criminal remedy provided by law.

Section 7. **Effective date.** Section 5 is effective July 1, 1984.

Approved April 11, 1983.

CHAPTER NO. 428

AN ACT TO DELETE THE REQUIREMENT THAT A SCHOOL TEACHER OR SPECIALIST MUST SUBSCRIBE TO AN OATH AS A QUALIFICATION FOR CERTIFICATION; TO REPEAL THE REQUIREMENT THAT EVERY PROFESSOR, INSTRUCTOR, OR TEACHER EMPLOYED BY ANY UNIT OF THE UNIVERSITY SYSTEM SHALL SUBSCRIBE TO AN OATH BEFORE ENTERING EMPLOYMENT; AMENDING SECTIONS 20-4-104 AND 20-4-201, MCA; AND REPEALING SECTION 20-25-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-104, MCA, is amended to read:

"20-4-104. Qualifications. (1) Any person may be certified as a teacher when he satisfies the following qualifications:

(a) He is 18 years of age or older but is not more than 70 years of age.

(b) He has a certificate of a licensed physician attesting to his satisfactory health.

(c) He is of good moral and professional character.

(d) He has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and such training shall be evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d).

(2) Any person may be certified as a specialist when he satisfies the requirements of subsections (1)(a) through (1)(c) and the requirement for a specialist certificate provided in subsection (2) of 20-4-106."

Section 2. Section 20-4-201, MCA, is amended to read:

"20-4-201. Employment of teachers and specialists by contract. (1) The trustees of any district shall have the authority to employ any person as a teacher or specialist, but only a person who holds a valid Montana teacher or specialist certificate or for whom an emergency authorization of employment has been issued that qualifies such person to perform the duties prescribed by the trustees for the position of employment. Each teacher or specialist shall be employed under written contract, and each contract of employment shall be authorized by a proper resolution of the trustees and shall be executed in duplicate by the chairman of the trustees and the clerk of the district in the name of the district and by the teacher or specialist.

(2) No contract of employment with a teacher or specialist shall require such teacher or specialist to teach more than 5 days a week or on any holiday recognized by 20-1-305. No deduction shall be made from a teacher's or specialist's salary by reason of the fact that a holiday falls on a school day. Any teacher's or specialist's contract made in conflict with the 5-days-per-week provision of this section shall not be enforceable against the teacher or specialist.

(3) Whenever the trustees of a county high school and the trustees of the elementary district where the county high school is located form a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may execute a contract of employment with a teacher or specialist who shall serve both districts. When such a contract is executed, the two districts shall prorate the compensation provided by such contract on the basis of the total number of instructional hours expended by such teacher or specialist within each district."

Section 3. **Coordination instruction.** If Senate Bill 358 is passed by the 48th Legislature and approved, sections 1 and 2 of this bill are void.

Section 4. **Repealer.** Section 20-25-106, MCA, is repealed.

Approved April 11, 1983.

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CHAPTER NO. 429

AN ACT TO REQUIRE THAT NOTICES OF PROPOSED RULEMAKING UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT BE MAILED TO ORGANIZATIONS AND MEMBERS THEREOF WHICH FILE A REQUEST WITH THE ADMINISTRATIVE CODE COMMITTEE; AMENDING SECTION 2-4-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon.

(2) *(a)* The notice shall be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed within 3 days of publication to persons who have made timely requests to the agency for notice of its rulemaking proceedings *and to the office of any professional, trade, or industrial society or organization or member thereof which has filed a request with the administrative code committee when such request has been forwarded to the agency as provided in subsection (b).*

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the Montana Administrative Register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice shall be published and mailed at least 30 days in advance of the agency's intended action.

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case may the notice period be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing shall be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected.

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(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of any hearing on the intended action, the person designated by the agency to preside at the hearing shall read aloud the "Notice of Function of Administrative Code Committee" appearing in the register."

Approved April 11, 1983.

CHAPTER NO. 430

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES; AMENDING SECTIONS 10-1-104, 10-1-302, 10-1-704, 10-3-103, 10-3-105, 10-3-107, 10-3-301, 10-3-311, 10-3-401, 10-3-404, 10-3-601, AND 10-3-607, MCA; REPEALING SECTION 10-1-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1-104, MCA, is amended to read:

"10-1-104. Federal regulations to govern. Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia, including The Uniform Code of Military Justice, shall, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the military forces of this state, *including all members of the national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32, U.S.C.*"

Section 2. Section 10-1-302, MCA, is amended to read:

"10-1-302. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or reenlists shall take and subscribe to the following oath of enlistment:

"I hereby acknowledge to have voluntarily enlisted this .... day of .... in the .... of the United States and the state of Montana for a period of .... years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies,

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and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any officer of the organized militia or any officer of the armed forces of the United States, detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted men."

Section 3. Section 10-1-704, MCA, is amended to read:

"10-1-704. Pay, allowances, pensions, and benefits. An officer or member of the home guard on active duty in the service of this state shall receive the same pay and allowances as prescribed for officers and enlisted members of the militia under 10-1-502."

Section 4. Section 10-3-103, MCA, is amended to read:

"10-3-103. Definitions. As used in parts 1 through 4 of this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, or air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, *disruption of state services,* or accidents involving radiation byproducts or other hazardous materials.

(4) "Disaster and emergency services" means the prevention of, the preparation for, and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to prevent, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department of military affairs.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize.

(7) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(8) "Principal executive officer" means the mayor, chairman of the county commissioners, or other chief executive officer of a political subdivision.

(9) "Search and rescue" means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress

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of, preserving life of, or removing survivors from the site of a hazard, emergency, or disaster to a place of safety in case of lost, stranded, entrapped, or injured persons.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings."

Section 5. Section 10-3-105, MCA, is amended to read:

"10-3-105. Division of disaster and emergency services — duties. (1) A division of disaster and emergency services is established in the department of military affairs. The division shall have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department of military affairs through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program shall be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program due to limitations of funding, manpower, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of actual emergency

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or disaster, to insure the availability of adequately trained and equipped personnel in time of emergency or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with emergencies and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) have any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor."

Section 6. Section 10-3-107, MCA, is amended to read:

"10-3-107. National defense highway plans. The department of military affairs shall:

(1) cooperate with the agencies of this and other states and of the federal government which are connected with national defense in the formulation and execution of plans for the rapid and safe movement over the highways of troops, vehicles of a military nature, and materials affecting the national defense;

(2) coordinate the activities of the department of highways and the department of justice in a manner which will best serve to carry out any such plan for the rapid and safe movement of troops, vehicles, and materials;

(3) solicit the cooperation of officials of the various political subdivisions of the state in the proper execution of these plans."

Section 7. Section 10-3-301, MCA, is amended to read:

"10-3-301. State disaster and emergency plan. (1) The state disaster and emergency plan and program may provide for:

(a) prevention and minimization of injury and damage caused by disaster;

(b) prompt and efficient response to an emergency or disaster;

(c) emergency relief;

(d) identification of areas particularly vulnerable to disasters;

(e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(f) organization of manpower and chains of command;

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(g) coordination of federal, state, and local disaster and emergency activities; and

(h) other necessary matters.

(2) In preparing and maintaining the state disaster and emergency plan and program, the division *may* seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division *may* encourage them to seek advice from these sources."

Section 8. Section 10-3-311, MCA, is amended to read:

"10-3-311. Emergency or disaster expenditures. (1) The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and *needs* arising from *an emergency or disaster, as defined in 10-3-103, which results* in damage to the works, buildings, or property of the state or any political subdivision thereof or which *menaces* the health, welfare, safety, lives, or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that:

(a) such political jurisdiction has exhausted all available emergency levies;

(b) the emergency is beyond the financial capability of the political jurisdiction to respond and for which no appropriation in the affected fund is available in sufficient amount to meet the emergency or disaster; or

(c) federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

(2) The governor shall be charged with the implementation of the program.

(3) The administration and development of rules for implementation of this section will be promulgated by the department of administration."

Section 9. Section 10-3-401, MCA, is amended to read:

"10-3-401. Local and interjurisdictional disaster and emergency plan — distribution. (1) Each *political subdivision eligible to receive funds under this chapter* shall prepare a local or interjurisdictional disaster and emergency plan and program covering the area for which that *political subdivision* is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(2) The *political subdivision* shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of:

(a) the emergency responsibilities of all local agencies, *if any*, and officials; and

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(b) the disaster and emergency chain of command."

Section 10. Section 10-3-404, MCA, is amended to read:

"10-3-404. Contents of order — effect. (1) An order or resolution declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, the conditions which have brought about the proclamation or declaration or which make possible termination of the state of emergency or disaster. Such orders or resolutions shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be filed promptly with the division and the agency charged with recording the official records of the political subdivision.

(2) The effect of an emergency proclamation or a disaster declaration is to activate applicable parts of the local or interjurisdictional disaster and emergency plan and program and to authorize the furnishing of aid and assistance in accordance with such plans and programs."

Section 11. Section 10-3-601, MCA, is amended to read:

"10-3-601. Citation of part. This part may be cited as "The Continuity in Government Act"."

Section 12. Section 10-3-607, MCA, is amended to read:

"10-3-607. Relocating seat of state government. *If* the seat of state government at Helena *is* rendered unsuitable for use in that capacity, the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space, and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature."

Section 13. **Repealer.** Section 10-1-504, MCA, is repealed.

Section 14. **Effective date.** This act is effective on passage and approval.

Approved April 11, 1983.

CHAPTER NO. 431

AN ACT INCREASING THE MILL LEVY LIMIT FOR LIBRARIES IN COUNTIES FROM 3 MILLS TO 5 MILLS AND IN MUNICIPALITIES FROM 4 ½ MILLS TO 7 MILLS; AND AUTHORIZING A GOVERNING BODY TO EXCEED THE MAXIMUM MILL LEVY FOR LIBRARY SERVICES UPON APPROVAL BY THE VOTERS; AMENDING SECTION 22-1-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-304, MCA, is amended to read:

"22-1-304. Tax levy — special library fund — bonds. (1) The governing body of any city or county which has established a public library

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may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service, not to exceed 5 mills on the dollar, upon all property in such county which may be levied by the governing body of such county and not to exceed 7 mills on the dollar upon all property in such city which may be levied by the governing body of such city.

(2) (a) The governing body of any city or county may by resolution submit the question of exceeding the maximum tax levy provided in subsection (1) to a vote of the qualified electors thereof at the next general election. Such resolution must be adopted at least 60 days prior to the general election at which the question will be voted on.

(b) Upon petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of exceeding the maximum mill levy, the governing body shall submit to a vote of the qualified electors thereof at the next general election the question of exceeding the maximum mill levy. Such petition must be delivered to the governing body at least 90 days prior to the general election at which the question will be voted on.

(c) The question shall be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) The votes cast for the adoption or rejection of the question must be canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the year in which the vote was taken; or

(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded.

(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law, and is not within the all-purpose mill levy established by 7-6-4451 through 7-6-4453.

(4) The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library.

(5) No money shall be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(6) Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 11, 1983.

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CHAPTER NO. 432

AN ACT TO EXPAND THE GEOGRAPHICAL AREA THAT MAY BE COVERED BY CONTRACTS NOT TO COMPETE AND TO PROVIDE THAT WHEN SUCH CONTRACTS CONCERN PARTNERSHIPS THEY MAY ONLY BE MADE UPON DISSOLUTION OF PARTNERSHIP; AMENDING SECTIONS 28-2-704 AND 28-2-705, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-2-704, MCA, is amended to read:

"28-2-704. Exception — sale of goodwill of business. *(1)* One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within *the areas provided in subsection (2)* so long as the buyer or any person deriving title to the goodwill from him carries on a like business therein.

(2) The agreement authorized in subsection (1) may apply in:

(a) the city where the principal office of the business is located;

(b) the county where the principal office of the business is located;

(c) a city in any county adjacent to the county in which the principal office of the business is located;

(d) any county adjacent to the county in which the principal office of the business is located; or

(e) any combination of the foregoing."

Section 2. Section 28-2-705, MCA, is amended to read:

"28-2-705. Exception — dissolution of partnership. Partners may, upon dissolution of the partnership, agree that *one or more* of them *may not* carry on a similar business within *the areas provided in 28-2-704(2)."*

Approved April 11, 1983.

CHAPTER NO. 433

AN ACT TO PROVIDE A MANDATORY TERM OF IMPRISONMENT IN THE COUNTY JAIL UPON A FIRST CONVICTION FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PROVIDING FOR JAIL TERMS OF CONSECUTIVE HOURS; INCREASING THE PENALTIES FOR SUBSEQUENT CONVICTIONS; AMENDING SECTION 61-8-714, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under the influence of alcohol or drugs. (1) A person convicted of a violation of 61-8-401 *shall* be punished by imprisonment in the county jail for *not less than* 24 *consecutive* hours *or more than 60 days*, and shall be punished by a fine of not less than $100 or more than $500. The jail sentence may not be suspended

unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, *at least 48 hours of which must be served consecutively,* or more than *6 months.* Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, *at least 48 hours of which must be served consecutively,* or more than 1 year, to which may be added, in the discretion of the court, a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record."

Approved April 11, 1983.

CHAPTER NO. 434

AN ACT INCREASING THE ALLOWABLE FEE FOR TRANSFER OF EQUITY INCIDENT TO A RETAIL SALE; AMENDING SECTION 31-1-234, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-234, MCA, is amended to read:

"31-1-234. Transfer of equity — fee. A buyer may transfer his equity in the goods at any time to another person upon agreement by the

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holder, but in such event the holder of the contract shall be entitled to a transfer of equity fee which shall not exceed *$50.*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 11, 1983.

CHAPTER NO. 435

AN ACT TO PROVIDE THAT IN ADDITION TO EMERGENCY CLOSINGS OF BANKS AS PROVIDED BY LAW, BANKS MAY CLOSE DURING LEGAL HOLIDAYS IN THE STATE OF MONTANA; AMENDING SECTION 32-1-481, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-481, MCA, is amended to read:

"**32-1-481. Bank holidays.** *In addition to emergency closings authorized by 32-1-561 through 32-1-565, a bank in the state of Montana may remain closed and refrain from doing business on those legal holidays designated in 1-1-216.*"

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 11, 1983.

CHAPTER NO. 436

AN ACT TO PROVIDE JOBS TO RAILROAD EMPLOYEES AFFECTED BY THE CONSOLIDATION OR CENTRALIZATION OF RAILROAD STATIONS AND FACILITIES; AMENDING SECTION 69-14-1001, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-1001, MCA, is amended to read:

"**69-14-1001. Protection of employees affected by closure, consolidation, or centralization of station or other facility.** (1) Whenever any railroad, as defined in 69-14-101, is granted the authority to close, *consolidate, or centralize* a railroad station or facility by order of the commission, the commission shall require employee protection. Before

the commission may approve closure, *consolidation, or centralization* of a station or facility, it shall require from the railroad an agreement to protect *each employee* affected by the closure, *consolidation, or centralization* by providing *a job at least* equal in nature and pay to the job held by the employee for the 6 months prior to the closure, *consolidation, or centralization or, if such job does not exist, compensation pay equal to that rate held by the employee 6 months prior to closure, consolidation, or centralization.* The equal job and pay agreement must be in effect for a period of 4 years or, in the alternative, the number of years the employee has been employed prior to closure, *consolidation, or centralization,* whichever is shorter.

(2) Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees."

Approved April 11, 1983.

CHAPTER NO. 437

AN ACT AMENDING SECTION 13-10-503, MCA, TO PROVIDE THAT ALL PETITIONS FOR NOMINATION BY INDEPENDENT CANDIDATES OR POLITICAL PARTIES NOT ELIGIBLE TO PARTICIPATE IN A PRIMARY ELECTION MUST BE SUBMITTED FOR SIGNATURE VERIFICATION AT LEAST 1 WEEK BEFORE THE FILING DEADLINE FOR THE PRIMARY ELECTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-503, MCA, is amended to read:

"13-10-503. Filing deadlines. (1) A petition for nomination, accompanied by the required filing fee, shall be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. *In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.*

(2) Except as provided in 13-10-504, each petition shall be filed on or before the filing deadline for the primary election or for the special or general election if no primary election is scheduled."

Approved April 11, 1983.

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CHAPTER NO. 438

AN ACT TO AMEND THE DEFINITION OF THE CRIME OF INCEST TO INCLUDE ANY SEXUAL CONTACT; TO EXTEND THE DEFINITION TO INCLUDE ANY STEPSON OR STEPDAUGHTER WHO HAS NOT BEEN ADOPTED BY THE PERSON COMMITTING THE OFFENSE; PROVIDING FOR THE DEFENSE OF CONSENT; AMENDING SECTION 45-5-613, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-613, MCA, is amended to read:

"**45-5-613. Incest.** (1) A person commits the offense of incest if he knowingly marries, cohabits *with,* has sexual intercourse with, *or has sexual contact as defined in 45-2-101 with* an ancestor, a descendant, a brother or sister of the whole or half blood, *or any stepson or stepdaughter.* The relationships referred to herein include blood relationships without regard to legitimacy, relationships of parent and child by adoption, *and relationships involving a stepson or stepdaughter.*

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both."

Approved April 11, 1983.

CHAPTER NO. 439

AN ACT TO REMOVE THE REQUIREMENT THAT THE CAPITOL PRESS ROOM BE LOCATED ON THE THIRD FLOOR, ADJACENT TO THE SENATE CHAMBERS; AMENDING SECTION 2-17-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-103, MCA, is amended to read:

"**2-17-103. Permanent press room.** The department of administration is required to provide for the use of representatives of the press a room on the third floor of the capitol to be used as a permanent press room."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1983.

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CHAPTER NO. 440

AN ACT TO AUTHORIZE COUNTIES AND MUNICIPALITIES TO LEVY NOT MORE THAN 1 MILL OF PROPERTY TAXES TO PROVIDE TRANSPORTATION SERVICES TO SENIOR CITIZENS AND HANDICAPPED PERSONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transportation for senior citizens and handicapped.** (1) A county or municipality may, in addition to all other property tax levies authorized by law, levy up to 1 mill of property taxes to fund special transportation services for senior citizens and handicapped persons.

(2) The county or municipality may use the proceeds of the levy to:

(a) contract with public or private transportation providers for services to senior citizens and handicapped individuals; or

(b) augment or subsidize provisions for the transportation of senior citizens and handicapped individuals provided by public transportation providers.

(3) If the county or municipality determines that it is not in the best interest of senior citizens and handicapped individuals to use the tax levy as provided for in subsection (2), the county or municipality may use the proceeds of the levy to establish and operate an independent transportation system for senior citizens and handicapped individuals.

(4) Counties or municipalities are encouraged to enter into interlocal agreements to provide regional transportation services to senior citizens and handicapped persons and may create regional advisory committees to coordinate regional transportation services.

Section 2. **Effective date.** This act is effective on July 1, 1983.

Approved April 12, 1983.

CHAPTER NO. 441

AN ACT AUTHORIZING SPECIAL LICENSE PLATES FOR VETERANS WITH 100-PERCENT SERVICE-CONNECTED DISABILITIES FOR HANDICAPPED INDIVIDUALS AND FOR FORMER PRISONERS OF WAR; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Special license plates — disabled veteran.** A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States and is 100% disabled because of an injury which

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has been determined by the veterans administration to be service connected, upon written application on form prescribed by the division, must be issued license plates specially inscribed with the letters and character DV- and three or four consecutive numbers.

Section 2. **Special license plates — ex-prisoner of war.** A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States and was captured and held prisoner by a military force of a foreign nation, documented by his service record, upon written application on the form prescribed by the division, must be issued license plates inscribed with the words "ex-prisoner of war", or such abbreviation as the division considers appropriate, and three or four consecutive numbers.

Section 3. **Special license plates — the handicapped.** A motor vehicle owner and resident of this state who is eligible to receive a special parking permit from the division under 49-4-301, upon written application on a form prescribed by the division, must be issued license plates bearing a representation of a wheelchair as the symbol of a handicapped person and three or four consecutive numbers.

Section 4. **Retention of special license plates.** If during a registration year, the holder of special license plates issued under [section 1, 2, or 3] disposes of the vehicle to which the plates are affixed, he shall retain the plates and may affix them to another vehicle.

Section 5. **Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 61, chapter 3, and the provisions of Title 61, chapter 3, apply to sections 1 through 4.

Section 6. **Effective date.** This act is effective January 1, 1984.

Approved April 12, 1983.

CHAPTER NO. 442

AN ACT TO PROVIDE THAT PERSONS, FIRMS, OR CORPORATIONS OWNING HOUSES, BUILDINGS, DERRICKS, OR OTHER STRUCTURES SHALL PAY 50 PERCENT OF THE NECESSARY AND REASONABLE EXPENSES, AS DETERMINED BY THE PUBLIC SERVICE COMMISSION, OF RAISING OR CUTTING WIRES OR REMOVING POLES TO FACILITATE THE MOVEMENT OF SUCH STRUCTURES UNLESS THE OWNERS OF THE WIRES OR POLES REFUSE TO RAISE, CUT, OR REMOVE THE SAME; REQUIRING THAT AN ESTIMATE OF THE COST BE GIVEN; REQUIRING OWNERS OF PREFABRICATED STRUCTURES TO PAY REASONABLE AND NECESSARY EXPENSES OF MOVING; AMENDING SECTIONS 69-4-602 AND 69-4-603, MCA.

WHEREAS, Title 69, chapter 4, part 6, MCA, provides for a procedure for moving houses and other structures under and through existing electrical powerlines, telegraph cables, and guy wires, requiring notice to the owner of the lines, cables, or wires; and

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WHEREAS, section 69-4-603, MCA, provides that the necessary and reasonable expenses of cutting or raising the lines, cables, or wires are generally to be borne by their owners; and

WHEREAS, the total payment for such services is an unreasonable and unfair burden to place on utilities and utility ratepayers, who cannot participate in decisions to move structures that require interference with lines, cables, and wires; and

WHEREAS, it is in the best interests of all electric, telephone, or cable television ratepayers in Montana that the necessary and reasonable expenses associated with movement of structures requiring wires, cables, or poles to be moved or raised pursuant to sections 69-4-601 through 69-4-604, MCA, be shared equally by the person, firm, or corporation owning the structure and the person, firm, or corporation owning or operating the wires, cables, or poles required to be moved; and

WHEREAS, a public purpose will be served by requiring that the person, firm, or corporation owning a structure under these statutes pay 50% of the necessary and reasonable expenses of raising or cutting wires and cables or moving poles to accomplish such move.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-602, MCA, is amended to read:

"69-4-602. Procedure to give required notice. The person, firm, or corporation moving any house, building, derrick, or other structure shall give the person, firm, or corporation owning or operating *the wires or* poles, at their *principal* office and their *nearest* office within the state, not less than *10* days' written notice of the *proposed* time and place *of moving a structure. The owner of the wires or poles shall give the mover a written estimate of the cost of* cutting, raising, *or moving the wires or poles at least 3 days prior to the move or within 10 days upon receipt of the written notice of the move, whichever time comes sooner.*"

Section 2. Section 69-4-603, MCA, is amended to read:

"69-4-603. Procedure to accomplish move. (1) It shall then be the duty of any person, firm, or corporation owning or operating said poles or wires after service of notice, as required by 69-4-602, to furnish competent workmen or linemen to remove such poles or raise or cut such wires as will be necessary to facilitate *moving* such house, building, derrick, or other structure.

(2) The necessary and reasonable expense of raising or cutting the wires or of removing the poles for utilities subject to the jurisdiction of the public service commission must be fixed and determined by the public service commission on the average cost per line or pole for time and materials expended. These costs and expenses must be determined at a hearing to be held within 180 days of [the effective date of this act] and must be reviewed biennially. Except as provided in subsections (4) and (5), the necessary and reasonable expense of raising or cutting the wires or of removing the poles shall be shared equally by the person, firm, or

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corporation owning the structure and the person, firm, or corporation owning or operating the wires, cables, or poles required to be moved.

(3) The rates and charges of rural cooperative electric utilities, rural cooperative telephone utilities, and other persons who occupy and use utility or cooperative poles may not exceed the charges established by the public service commission for utilities subject to its jurisdiction. The charges assessed by such utilities shall be apportioned as in subsection (2).

(4) Owners of prefabricated structures built with the intention of moving shall pay the necessary and reasonable costs of raising or cutting wires or cables or moving poles to facilitate the movement.

(5) No person, firm, or corporation *owning or* engaged in moving any house, building, derrick, or other structure shall raise, cut, or in any way interfere with any such poles or wires, unless the persons or authorities owning or having control of the same shall refuse to do so after having been notified, as required by 69-4-602; then, only competent and experienced workmen or linemen shall be employed in such work, and in such case the necessary and reasonable expense shall be paid by the owners of the poles and wires handled. The work shall be done in a careful and workmanlike manner, and the poles and wires shall be promptly replaced and the damages thereto promptly repaired."

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 12, 1983.

CHAPTER NO. 443

AN ACT AMENDING SECTION 19-4-804, MCA, TO INCREASE THE AMOUNT A RETIRED MEMBER OF THE TEACHERS' RETIREMENT SYSTEM MAY EARN WITHOUT LOSS OF RETIREMENT BENEFITS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-804, MCA, is amended to read:

"19-4-804. Allowance for superannuation retirement. (1) Upon superannuation retirement a member shall receive a retirement allowance consisting of a pension which, together with an annuity, provides a retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of creditable service.

(2) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn, without loss of retirement benefits, an amount not to exceed *the greater of:*

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(a) one-third of *the sum of* his average final compensation *plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement; or*

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 12, 1983.

CHAPTER NO. 444

AN ACT REESTABLISHING THE BOARD OF LIVESTOCK UNDER EXISTING STATUTORY AUTHORITY AND RULES; REMOVING THE BOARD OF LIVESTOCK FROM PERIODIC AGENCY EVALUATION; ESTABLISHING FEES COMMENSURATE WITH COSTS; CLARIFYING THE TIME FOR TRANSMITTING LIVESTOCK TAXES; REQUIRING DESIGNATION OF THOSE INSPECTORS AND DETECTIVES CONSIDERED LAW ENFORCEMENT OFFICERS; AUTHORIZING THE DEPARTMENT OF LIVESTOCK TO ADOPT RULES AND ESTABLISH FEES FOR HANDLING ESTRAYS; REVISING COMPENSATION FOR THE PORK RESEARCH AND MARKETING COMMITTEE; ELIMINATING REQUIREMENTS CONCERNING NOTIFICATION OF SALE OF FIVE OR LESS HEAD OF LIVESTOCK AND BONDS FOR OPERATING A LIVESTOCK MARKET; ELIMINATING THE SALE OF FIVE OR LESS HEAD OF LIVESTOCK AS AN EXEMPTION FROM BRAND INSPECTION; AMENDING SECTIONS 2-8-103, 15-24-925, 81-1-102, 81-1-201, 81-2-502, 81-3-107, 81-3-205, 81-3-210, 81-3-211, 81-3-214, 81-4-605, 81-5-202, 81-7-504, 81-8-256, 81-8-276, 81-8-304, 81-8-603, 81-9-113, 81-9-201, 81-9-301, 81-9-411, 81-20-201, 81-21-102, 81-22-102, 81-22-204, 81-22-205, AND 81-22-208, MCA; REPEALING SECTIONS 81-3-216 AND 81-8-257, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Livestock and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Livestock be reestablished under existing statutory authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The Board of Livestock created pursuant to 2-15-3102 is reestablished with its existing statutory authority and rules.

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Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of commerce, created by 2-15-1881;

(d) board of milk control, department of commerce, created by 2-15-1802;

(e) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(f) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(g) public service commission, department of public service regulation, created by 69-1-102;

(h) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

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(i) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

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(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202."

Section 3. Section 15-24-925, MCA, is amended to read:

"15-24-925. Transmission of taxes from county to state treasurer. The taxes levied and the money collected pursuant to the provisions of 15-24-923 shall be transmitted with other taxes for state purposes to the state treasury by the county treasurer of each county *as provided in 15-1-504*, and such county treasurer shall designate the amount received from the tax levied on sheep and the amount received from the tax levied on all other livestock and shall specify said separate amounts in his report to the state treasurer. Such money, when received by the state treasurer, shall be placed to the credit of the funds as provided in 15-24-924."

Section 4. Section 81-1-102, MCA, is amended to read:

"81-1-102. Duties and powers of department — fees based on costs. *(1)* The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation which, in the judgment of the department, fosters this industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) The department shall by rule establish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134."

Section 5. Section 81-1-201, MCA, is amended to read:

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"**81-1-201. Appointment and powers.** The department may appoint stock inspectors and detectives necessary for the protection of the livestock interests of this state. The *department shall designate which* inspectors and detectives *are considered law enforcement officers, and those designated* shall take the official oath required by law and shall have similar powers and authority to those conferred by law on deputy sheriffs. However, they are not entitled to the fees or emoluments awarded by law to deputy sheriffs. The board shall devise an examination for the qualification of stock inspectors and detectives *designated as law enforcement officers* and may appoint and employ only persons who successfully pass such examination. The board shall promulgate administrative rules for the taking of this examination and define a passing grade."

Section 6. Section 81-2-502, MCA, is amended to read:

"**81-2-502. Licenses.** (1) It is unlawful to handle, prepare, cook, or otherwise treat garbage to feed to swine or other animals or to feed garbage to swine or other animals without first securing a license for that purpose from the department of livestock. One license issued to the entrepreneur, corporation, or individual responsible for a particular garbage feeding enterprise covers all garbage feeders concerned with the enterprise. The license provided for in this section expires on December 31 of the year in which it is issued. *The department shall establish a* fee *to* be charged for all licenses issued under this part. All license fees collected shall be paid into the *earmarked revenue fund for the use of the department.*

(2) This part does not apply to a person who feeds only his own household garbage to swine or other animals."

Section 7. Section 81-3-107, MCA, is amended to read:

"**81-3-107. Fees for department.** The department shall *establish,* charge, and collect *a fee* for recording a new mark or brand, for recording a mark or brand transfer, or for rerecording a mark or brand. The department shall *establish and* charge *a fee* for *providing* a certified copy of a record and a duplicate certificate. All fees collected shall be paid into the earmarked revenue fund for the use of the department. However, not more than 10% of the net rerecording fees after all expenses of rerecording are paid may be expended in any one year except in case of an emergency declared by the governor."

Section 8. Section 81-3-205, MCA, is amended to read:

"**81-3-205. Fees for inspection and livestock transportation permits.** (1) For the service of inspection of all livestock except horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspections shall receive *a fee established by the department for each head inspected.* For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county for all livestock, the inspector, sheriff, or deputy sheriff issuing the permits shall receive *a fee established by the department for each permit issued* and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the

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inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive *a fee established by the department* for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector, sheriff, or deputy sheriff at the time of inspection or issuance of permit, and all the fees and expenses collected by a deputy state stock inspector, sheriff, or deputy sheriff shall be retained by him, and all such fees and expenses collected by a state stock inspector shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(2) For the service of inspection before any livestock except a horse, mule, or ass is sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse, a state stock inspector or deputy state stock inspector making the inspection shall receive *a fee established by the department for each head inspected.* All fees shall be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release shall receive *a fee established by the department for each head inspected* from the owner or the person for whom the release is made. All fees for inspection and release at the market shall be collected at the time the inspection or release is made by the state stock inspector making the inspection or release and shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. All fees for preslaughter inspection made at a licensed slaughterhouse by the state stock inspector shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. Preslaughter inspection fees paid to a deputy state stock inspector shall be retained by him.

(3) (a) For the service of inspection of horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspection shall receive *a fee established by the department for each head inspected* and shall receive in addition his necessary actual expenses to be paid by the owner or the person for whom the inspection is made. All fees and expenses collected by a state stock inspector must be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(b) For the service of inspection before a horse, mule, or ass is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection shall receive *a fee established by the department for each head inspected.* All fees shall be paid by the owner or the person for whom the inspection is made to the state stock inspector.

(4) All inspection and release fees and expenses shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department unless paid to a deputy state stock inspector. State stock inspectors shall be paid for their services and receive their expenses as fixed by the department."

Section 9. Section 81-3-210, MCA, is amended to read:

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"81-3-210. Bill of sale required to prove ownership. (1) A bill of sale signed by the seller and adequately describing the livestock sold must be presented to the livestock inspector whenever the change of ownership inspection required by 81-3-211 is made or whenever a buyer of livestock requests a county-line or state-line inspection for livestock. The bill of sale shall be in a form prescribed by the department and shall be taken up by the department with the certificate of inspection acting as a receipt.

(2) The department shall *establish,* charge, and receive a fee for each copy of a bill of sale requested after the original bill of sale has been taken up. Fees so received shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department."

Section 10. Section 81-3-211, MCA, is amended to read:

"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits. (1) For the purposes of this section:

(a) "Members of the same family" means a group whose membership is determined by including an individual, his spouse, and his parents, children, grandchildren, and the spouses of each.

(b) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members all are members of the same family; or

(iv) any other entity owned solely by members of the same family.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when the change of ownership transaction is accomplished without the livestock changing premises, involves part of a herd to which no livestock have been added other than by natural increase or after brand inspection, and is between:

(a) members of the same family;

(b) a member of one family and the same family's business entity; or

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(c) the same family's business entities.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock have been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this section or where change of ownership has occurred or when moved under a market consignment permit or a market release certificate, shall have in his possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 shall be extended to livestock transported or sold under the above-mentioned permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business or where a purebred cow is being transported from county to county in this state by its owner for show purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow is to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a permit fee *established by the department,* for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon

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approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer is being transported from county to county in this state by the owner for rodeo purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector.

(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an immediately adjoining county and return when the livestock is being moved for grazing purposes and when it is being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for 6 months and must be issued by a state stock inspector. The *department shall establish a* fee for the permit, *to* be paid to the state stock inspector at the time the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees."

Section 11. Section 81-3-214, MCA, is amended to read:

"81-3-214. Inspection of imported livestock. (1) Except as provided in subsections (2) and (3) of this section, any person owning livestock imported into this state or his agent must notify the department or a salaried employee of the department of the number, breed, type, and age of the livestock, its location, and the purpose for which it has been brought into the state. Such notification shall be made within 48 hours after the arrival of the livestock in the state. Livestock so moved may not be commingled with any livestock already in Montana until inspected for brands and marks in daylight by a state stock inspector or deputy state stock inspector. The fees for this inspection shall be the same as those imposed for county line or change of ownership inspections. The fees paid to state stock inspectors shall be remitted to the department for deposit in the earmarked revenue fund for the use of the department.

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(2) Livestock consigned to a licensed livestock market or for immediate slaughter to a licensed slaughter facility at which preslaughter inspection is maintained is exempt from the requirements of this section.

(3) Livestock moved between Montana and an adjacent state for graze on a regular basis and as part of the usual operation of a farm or ranch shall be exempt from the notice and inspection requirements of this section provided a transportation permit for the entry of the livestock into Montana has been obtained by the owner or his agent from a state stock inspector prior to the entry of the livestock into Montana. The *department shall establish a* fee for the permit, *to* be remitted by the department to the state treasury for credit to the earmarked revenue account of the department. The department shall provide by rule for the issuance and control of transportation permits authorized by this subsection."

Section 12. Section 81-4-605, MCA, is amended to read:

"81-4-605. Expenses, how paid — disposition of proceeds of sale. *(1)* Expenses for collecting, holding, advertising, and selling of the estray, *including but not limited to labor, feed, supplies, and veterinary services,* shall be paid out of the gross proceeds of the sale of the estray, and the balance of the proceeds of the sale shall be forwarded to the department to be advertised as estray funds in the manner provided by law. The proceeds are subject to claim by the owner of the animal for a period of 2 years from the date of the sale. If the owner of the estray claims the animal before the sale of the animal, the expense incurred by the stock inspector to that time shall be paid by the owner.

(2) The department may adopt rules and establish fees for the handling of estrays."

Section 13. Section 81-5-202, MCA, is amended to read:

"81-5-202. Form and issuance of permits — fee. Before making an order under this part, the department must provide for the form of the permit and for issuance of the permits by livestock inspectors in the affected county. *The department shall establish a fee* for issuance of the permit."

Section 14. Section 81-7-504, MCA, is amended to read:

"81-7-504. Duration of permit — fee. *The department of livestock shall establish a fee for the permit and each* permit shall be valid for a period set by the department not to exceed 3 years. All fees for permits shall be paid to the department of livestock for deposit in the state treasury to the credit of the earmarked revenue fund for predatory animal control."

Section 15. Section 81-8-256, MCA, is amended to read:

"81-8-256. Fee to operate livestock market. A person operating a livestock market shall pay annually on May 1 to the department *a fee established by the department.* All fees shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department."

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Section 16. Section 81-8-276, MCA, is amended to read:

"**81-8-276. Annual fee and financial statement.** Livestock brokers and livestock dealers shall pay an annual fee *established by the department* and supply a current financial statement. The fee is payable on May 1 to the state treasurer to the credit of the department."

Section 17. Section 81-8-304, MCA, is amended to read:

"**81-8-304. Fees.** The department shall charge a fee for filing and listing the notices of security agreements for each recorded brand listed in each security agreement and for filing and listing each notice of satisfaction, renewal, or assignment of the security agreement for each recorded brand listed. The fees shall be set by rules adopted pursuant to the Montana Administrative Procedure Act, upon the basis of actual cost to the department for each brand listed. All fees shall be paid into the earmarked revenue fund for the use of the department."

Section 18. Section 81-8-603, MCA, is amended to read:

"**81-8-603. Compensation.** Members of the committee *are entitled to be reimbursed and compensated as are members of quasi-judicial boards in 2-15-124(7).*"

Section 19. Section 81-9-113, MCA, is amended to read:

"**81-9-113. Fees for inspection.** The state or deputy state stock inspector making the inspection required by 81-9-112 shall collect a *fee established by the department for each* head *inspected,* plus all necessary expenses. State stock inspectors shall promptly remit all fees and expenses collected under this section to the department for deposit in the earmarked revenue fund. Deputy state stock inspectors shall keep their fees and expenses."

Section 20. Section 81-9-201, MCA, is amended to read:

"**81-9-201. Slaughterhouse license — fees and renewals.** It is unlawful for a person, firm, or corporation to maintain or conduct a slaughterhouse, meat packinghouse, or meat depot in this state without having a license issued by the department. The *department shall establish an* annual fee for a license issued under this section, *to* be paid into the *earmarked revenue fund for the use of the department.* All licenses expire on December 31 of the year in which they are issued and shall be renewed by the department on request of the licensee. However, when the department finds that the place for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the place is in a sanitary condition in accordance with department rules."

Section 21. Section 81-9-301, MCA, is amended to read:

"**81-9-301. Licensing of rendering or disposal plants.** (1) It is unlawful to operate in this state a rendering or disposal plant or establishment that is intended to be operated for the disposal of bodies or parts of bodies of animals or fowl in any manner, except for human consumption, without first securing a license from the department of livestock.

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(2) The license expires on December 31 of the year in which it is issued. *The department shall establish a* fee *to* be charged for licenses issued under 81-9-301 through 81-9-306.

(3) All license fees collected shall be paid into the *earmarked revenue fund for the use of the department.*"

Section 22. Section 81-9-411, MCA, is amended to read:

"81-9-411. Hide dealer or buyer's license fee — disposition of proceeds. Before engaging in business in this state, a hide dealer or buyer shall obtain a license from the department. The *department shall establish an* annual license fee *to be charged* for each established place of business at which the hide dealer or buyer purchases or deals in hides. The license continues in force for that calendar year. The moneys collected from the licenses shall be placed in the earmarked revenue fund for the department. The license must be renewed January 1 of each year."

Section 23. Section 81-20-201, MCA, is amended to read:

"81-20-201. Egg dealer's and egg grader's licenses — fee. (1) No person may buy, sell, or deal in eggs without first obtaining a license from the department of livestock for each establishment at which business is conducted. A licensee shall send to the department the reports which are requested by the department. The *department shall establish a* license *fee* for dealers buying eggs for sale at retail *and for* dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses expire March 31 each year after the date of issuance.

(2) A person buying, selling, or dealing in eggs, a major portion of which are produced by his own fowl, or in amounts less than an average of 25 cases per month, is exempt from the requirements of this section.

(3) Wholesale and retail dealers who handle more than 25 cases of eggs per month supplying eggs to consumers must, when selling candled eggs, sell only eggs candled by or under the supervision of experienced and licensed graders. The *department shall establish a* fee for a grader's license. All candlers and graders must pass an examination required by the department. The license expires March 31 each year after the date of issuance."

Section 24. Section 81-21-102, MCA, is amended to read:

"81-21-102. Licensing of milk plants and dairies selling milk or cream for public consumption. (1) It is unlawful for the following businesses to operate in this state without first obtaining a license from the department:

(a) a dairy selling milk or cream for public consumption in the form in which it is originally produced;

(b) a condensed, evaporated, or powdered milk plant;

(c) a fluid milk plant.

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(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules of the department or has failed to conduct his establishment in a sanitary manner. All license fees collected shall be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) *The department shall establish license fees for the following facilities:*

(a) condensed, evaporated, or powdered milk factory;

(b) fluid milk plant; *and*

(c) dairy.

(5) A person violating this section is guilty of a misdemeanor."

Section 25. Section 81-22-102, MCA, is amended to read:

"81-22-102. General authority of department. (1) The department may regulate and establish sanitation standards for persons operating dairies producing milk for manufacturing purposes. The department may regulate and establish sanitation and quality standards for a person engaged in the processing of manufactured dairy products or of products made or sold in the semblance or imitation of dairy products in this state when those products made in semblance or imitation of dairy products are made in a manufactured dairy products plant.

(2) The department may adopt minimum standards for the production, transportation, grading, testing, use, processing, packaging, and storage of milk and cream used for manufacturing purposes and of manufactured dairy products.

(3) The department shall adopt rules and establish fees for licenses for selling or producing milk as required by 81-23-202."

Section 26. Section 81-22-204, MCA, is amended to read:

"81-22-204. License required for milk or cream route. It is unlawful for a person to engage in hauling milk or cream on an established milk or cream route for a manufactured dairy products plant, milk plant, or milk or cream station without first procuring a license from the department. The *department shall establish a* fee for the license."

Section 27. Section 81-22-205, MCA, is amended to read:

"81-22-205. Examination and licensing of persons engaged in testing. (1) A person may not operate a butterfat, protein, solids, or other

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component content test where milk or cream is bought and paid for on the basis of these values without first passing an appropriate examination and obtaining the license required by the department. A person desiring to operate these tests shall apply to the department for permission to take the butterfat, protein, solids, or other component content test operator's examination. The examination shall be given to the applicant by the department. On passing the examination to the satisfaction of the department, the applicant shall be issued a license authorizing him to conduct these tests in this state. *The department shall establish a* fee *to* be paid for each license and for each renewal.

(2) Milk and cream tester's licenses may be revoked, suspended, or denied where testing is not conducted under official test procedures or under department rules. If the tester regularly or habitually reports results below the actual values of the butterfat, protein, solids, or other compound component values, the licensee is subject to the penalties provided in this chapter. A person who alters the results of an official test is subject to the penalties provided in this chapter."

Section 28. Section 81-22-208, MCA, is amended to read:

"81-22-208. Licenses and schedule of license fees. (1) Licenses and license fees required under this part *must be established by the department for the following facilities and activities*:

(a) *manufactured* dairy products plant*; however*, a plant license is not required of a food service establishment licensed by the Montana department of health and environmental sciences as defined in 50-50-102, and no license is required to manufacture nondairy products when only such products are manufactured*;*

(b) *cream* station*; however*, a license is not required if the cream station is owned and operated by a licensed plant; but the milk and cream, equipment, premises, and means of transporting milk or cream is subject to official inspection*;*

(c) *dairy* producing milk for manufacturing purposes*; however*, a dairy license is not required if the dairy farm is licensed by the department to produce and sell milk or cream in the form in which it is originally produced as required by 81-21-102*; and*

(d) *grader-weigher-sampler, tester, and hauler; however*, a separate grader-weigher-sampler, tester, and hauler license is required whether a person performing these activities owns and operates the plant, is employed by the plant, or is self-employed.

(2) A license is valid on the date issued through December 31 of that year unless suspended or revoked by the department. A license must be renewed by the first January 31 following the expiration date of December 31. A license renewal application form may be supplied by the department. When the license renewal application form is returned to the department, it shall be accompanied by the correct license fee. A license shall be posted in conspicuous view at the place of business. A license is not transferable from place to place or from person to person. A penalty *fee in an amount established by a rule of the department* may be imposed by *it* on a person

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who fails to apply for renewal of his license if under the part that person is required to be licensed.

(3) All license fees collected shall be deposited in the general fund."

Section 29. **Repealer.** Sections 81-3-216 and 81-8-257, MCA, are repealed.

Section 30. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1983.

CHAPTER NO. 445

AN ACT TO REVISE THE LAW PROVIDING FOR PROTEST OF THE ISSUANCE OR TRANSFER OF A LIQUOR LICENSE; AMENDING SECTION 16-4-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer such license, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that such applicant has made application for such license and that protests against the issuance of a license to the applicant may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license shall be published once a week for 4 consecutive weeks. Notice of application for transfer of a license shall be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

Notice is hereby given that on the .... day of ...., 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold), and protests, if any there be, against the issuance of such license may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 19...

Dated .... Signed .....

ADMINISTRATOR

(2) Each applicant shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of publishing the notice.

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(3) If the administrator receives no *written* protests, the department may issue or transfer the license without holding a public hearing. If *written* protests against the *issuance* or transfer of the license are received, the department shall hold a *public* hearing at its office in Helena."

Approved April 12, 1983.

CHAPTER NO. 446

AN ACT INCREASING THE MAXIMUM AMOUNT OF A SERVICE OR DISABILITY PENSION THAT MAY BE PAID TO A VOLUNTEER FIREFIGHTER BY A FIRE DEPARTMENT RELIEF ASSOCIATION; AMENDING SECTIONS 19-11-602 AND 19-11-604, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-11-602, MCA, is amended to read:

"**19-11-602. Service pension.** (1) Each association shall pay, out of its disability and pension fund, a service pension to each of its members who elects to retire from active service after having completed 20 years or more of active duty and has reached the age of 50 years as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town in which the association was formed. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department. No member is eligible to receive a service pension prior to attaining the age of 50 years.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the pension may not exceed *$150* a month.

(4) As of July 1, 1977, a member is not eligible to receive a service pension under this section unless he is making a monthly contribution to the disability and pension fund, as required by 19-11-501, and is on active duty as a fully paid member of a fire department when he reaches the age of 50 years.

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(5) A member of a pure volunteer fire department who has served 20 years or more as an active member of the fire department is entitled to the benefits provided for in this chapter regardless of his age. A member of a pure volunteer fire department who has completed 10 years' service as an active member of the fire department but who is prevented from completing 20 years' service by dissolution or discontinuance of his volunteer fire department, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control may nevertheless qualify for a partial or reduced pension in an amount and to the extent determined by the board of trustees of the association, regardless of his age."

Section 2. Section 19-11-604, MCA, is amended to read:

"**19-11-604. Disability pension.** (1) Each association shall pay a disability pension, out of its disability and pension fund, to each of its members who has become disabled by reason of sickness or injury. The pension shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services to the fire department of the city or town in which the association was formed.

(2) Effective July 1, 1974, a member who completes 20 years of service and elects to serve additional years shall receive the pension provided for in subsection (1) increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(3) The monthly pension paid to members retiring on or after July 1, 1973, must be at least one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. The monthly pension paid to a member retiring prior to July 1, 1974, must be at least $200. In the case of volunteer firefighters, the disability pension may not exceed *$125* a month."

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 12, 1983.

CHAPTER NO. 447

AN ACT CREATING A TAX DEDUCTION FOR CORPORATIONS AND SHAREHOLDERS OF ELECTING SMALL BUSINESS CORPORATIONS MAKING A DONATION OF A COMPUTER OR SIMILAR EQUIPMENT TO AN ELEMENTARY, SECONDARY, OR ACCREDITED POSTSECONDARY SCHOOL; AMENDING SECTION 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-114, MCA, is amended to read:

"**15-31-114. Deductions allowed in computing income.** In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

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(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(ii) The modifications referred to in (i) of this subsection shall be as follows:

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(A) No net operating loss deduction shall be allowed.

(B) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(C) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(iii) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(v) Notwithstanding the provisions of 15-31-531, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(vi) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

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(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) Light vehicle license fees, as provided by 61-3-532, paid within the year.

(7) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(8) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(9) In lieu of the deduction allowed under subsection (8), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of (b) of this subsection (9)."

Section 2. **Small business corporation — deduction for donation of computer equipment to schools.** A small business corporation electing to be taxed under the provisions of 15-31-202 is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services;

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2); and

(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions.

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Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to section 2.

Section 4. **Effective date — applicability.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1982.

Approved April 12, 1983.

CHAPTER NO. 448

AN ACT TO GENERALLY REVISE AND CLARIFY CERTAIN LAWS RELATING TO SURFACE AND GROUND WATER; AMENDING SECTIONS 85-2-112, 85-2-113, 85-2-123, 85-2-124, 85-2-236, 85-2-302, 85-2-303, 85-2-306 THROUGH 85-2-308, 85-2-311, 85-2-312, 85-2-314, 85-2-315, 85-2-402, AND 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-112, MCA, is amended to read:

"**85-2-112. Department duties.** The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a district court under this chapter;

(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in [section 17]."

Section 2. Section 85-2-113, MCA, is amended to read:

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"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates, *for rulemaking hearings under [section 17], for administrative hearings conducted under this chapter, for investigations concerning permit revocation, for field verification of issued and completed permits, and all change approvals.* There shall be no fees for any action taken by the department at the request of the water judge or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices, except that the board may not require a meter on a water well outside of a controlled groundwater area or proposed controlled groundwater area unless the maximum *appropriation* of the well is in excess of 100 gallons a minute;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 3. Section 85-2-123, MCA, is amended to read:

"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-124, all fees and penalties collected under this chapter shall be deposited in the *water right appropriation account established in 85-2-318.* All penalties or fines imposed by any court for a violation of this chapter shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine."

Section 4. Section 85-2-124, MCA, is amended to read:

"85-2-124. Fees for environmental impact statements. (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act and the application (or combination of applications) involves the use of 10,000 or more acre-feet per year or 15 or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within *90* days of receipt of a correct

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and complete application (or a combination of applications) if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1), the applicant shall pay a fee based upon the estimated cost of constructing, repairing, or changing the appropriation and diversion facilities as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale: 2% of the estimated cost up to $1 million; plus 1% of the estimated cost over $1 million and up to $20 million; plus ½ of 1% of the estimated cost over $20 million and up to $100 million; plus ¼ of 1% of the estimated cost over $100 million and up to $300 million; plus ⅛ of 1% of the estimated cost over $300 million. The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any such contract or contracts;

(c) the use or nonuse of a fee or any part thereof paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any such contract or contracts shall be credited against any fee the applicant must pay hereunder. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility or public need pursuant to the Montana Major Facility Siting Act, and the appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the department pursuant to that act.

(6) This section shall apply to all applications, pending or hereinafter filed, for which the department has not, as of April 9, 1975, commenced writing an environmental impact statement. This section shall not apply to any application, the fee for which would not exceed $2,500.

(7) Failure to submit the fee as required by this section shall void the application(s).

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(8) The department may, in its discretion, rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement."

Section 5. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. *(1)* When a final decree is entered, the water judge shall send a copy to the department. The department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the *person to whom the right is decreed.* The department shall keep a copy of the certificate in its office in Helena.

(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county."

Section 6. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as otherwise provided in (1) *through (3)* of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to *3* months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within *3* months shall be terminated."

Section 7. Section 85-2-303, MCA, is amended to read:

"85-2-303. Permit for conversion of nonproductive oil or gas well. A person who desires to convert a nonproductive oil or gas well to a water well shall file a notice of completion or apply for a permit, depending on the maximum *appropriation* of the well, as otherwise provided in this chapter. The date of appropriation shall be the date of filing the notice of completion or the application for a permit."

Section 8. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute. Within 60 days of completion of the well or developed spring and appropriation

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of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects, if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of groundwater by means of a well or developed spring, first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. *The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection.* The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section *or the date of the filing of the claim of existing water right.* An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 gallons per minute, the department shall issue a certificate of water right.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is *less than 30 acre-feet per year and is* from a source other than a perennial flowing stream, and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and

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may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 9. Section 85-2-307, MCA, is amended to read:

"**85-2-307. Notice of application.** (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for 2 consecutive weeks. Before the last date of publication, the department shall also serve the notice by first-class mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under 85-2-316. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than *15* days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 10. Section 85-2-308, MCA, is amended to read:

"**85-2-308. Objections.** (1) An objection to an application must be filed by the date specified by the department under 85-2-307(2).

(2) The objection must state the name and address of the objector and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, *water* rights, or interests of the objector would be adversely affected by the proposed appropriation, *that the proposed use of water is not a beneficial use, or that the proposed use will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.*"

Section 11. Section 85-2-311, MCA, is amended to read:

"**85-2-311. Criteria for issuance of permit.** The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply:

(a) at times when the water can be put to the use proposed by the applicant;

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(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2) the *water* rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of 10,000 acre-feet a year or more and 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(7) except as provided in subsection (6), the applicant proves by substantial credible evidence the criteria listed in subsections (1) through (5)."

Section 12. Section 85-2-312, MCA, is amended to read:

"**85-2-312. Terms of permit.** (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department may limit the time for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the *permittee*, and a copy shall be kept in the office of the department in Helena.

(4) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all water right permits, certificates, and change approvals issued by the department within the county."

Section 13. Section 85-2-314, MCA, is amended to read:

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"85-2-314. Revocation or modification of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, the department may, after notice, require the permittee to show cause why the permit should not be *modified or* revoked. If the permittee fails to show sufficient cause, the department may *modify or* revoke the permit."

Section 14. Section 85-2-315, MCA, is amended to read:

"85-2-315. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the *permittee*, and a duplicate shall be kept in the office of the department in Helena.

(2) *The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county.*"

Section 15. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use, or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2), and hearings shall be held in accordance with 85-2-309.

(3) An appropriator of more than 15 cubic feet per second may not change the purpose of use of an appropriation right from an agricultural *or irrigation* use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity

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for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(6) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the water rights of other persons. If the department determines that the proposed change might adversely affect the water rights of other persons, notice of the proposed change must be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose water rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections must meet the requirements of 85-2-308, and hearings must be held in accordance with 85-2-309.

(7) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(8) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section."

Section 16. Section 85-2-403, MCA, is amended to read:

"85-2-403. Transfer of appropriation right. The right to use water shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority."

Section 17. **Permit action in highly appropriated basins or subbasins.** (1) The legislature may, by law, preclude permit applications, or the department may by rule reject permit applications or modify or condition permits issued in a highly appropriated basin or subbasin.

(2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin. The petition must be in a form as prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected; or

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

(3) Within 60 days after submission of a petition, the department shall:

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(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department must study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice not less than 30 days before the hearing upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source.

Section 18. **Codification instruction.** Section 17 is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to section 17.

Section 19. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1983.

CHAPTER NO. 449

AN ACT PROVIDING THAT WHEN THE CIRCUMSTANCES OF A CHILD'S CUSTODIAL SITUATION HAVE CHANGED AND WHEN IT IS IN THE CHILD'S BEST INTEREST, A CHILD CUSTODY DECREE MAY BE MODIFIED IF THE CHILD IS 14 YEARS OF AGE OR OLDER AND DESIRES THAT IT BE MODIFIED; AMENDING SECTION 40-4-219, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Modification.** (1) The court *may in its discretion* modify a prior custody decree *if* it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child *and if it further finds that*:

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(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him; *or*

(d) the child is 14 years of age or older and desires the modification.

(2) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(3) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221."

Approved April 12, 1983.

CHAPTER NO. 450

AN ACT DEFINING A BICYCLE AS A "VEHICLE"; REVISING AND CLARIFYING THE BICYCLE TRAFFIC LAWS; AMENDING SECTIONS 61-1-103, 61-1-123, 61-8-333, 61-8-336, 61-8-338, 61-8-354, 61-8-368, 61-8-504, 61-8-602, 61-8-604, AND 61-8-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that it is appropriate to conform Montana's laws on bicycles with the provisions of the Uniform Vehicle Code.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-103, MCA, is amended to read:

"61-1-103. Vehicle. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks. However, in chapters 3 and 4, the term means "motor vehicle" as defined in this part."

Section 2. Section 61-1-123, MCA, is amended to read:

"61-1-123. Bicycle. "Bicycle" means:

(1) every *vehicle* propelled *solely* by human power upon which any person may ride, having two tandem wheels *and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices*; or

(2) every *vehicle* equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the

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maximum piston or rotor displacement may not exceed 3.05 cubic inches (50 centimeters) regardless of the number of chambers in the power source. The power source must not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged."

Section 3. Section 61-8-333, MCA, is amended to read:

"61-8-333. Required position and method of turning at intersections — bicycle turn procedures — signs. (1) The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left turn on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(d) A person making a turn under subsections (1)(a), (1)(b), or (1)(c) is entitled to the full use of the lane from which the turn may be legally made.

(2) (a) A person operating a bicycle who intends to turn left shall follow the course described in subsection (1) or in subsection (2)(b).

(b) A person operating a bicycle who intends to turn left shall approach the turn as close as practicable to the right curb or edge of the roadway. After proceeding across the intersecting roadway, the person shall make the turn as close as practicable to the curb or edge of the roadway on the far right side of the intersection. After turning, the person shall yield to through traffic and shall comply with any official traffic-control device or police officer regulating traffic on the highway along which he intends to proceed.

(3) Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and

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thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs."

Section 4. Section 61-8-336, MCA, is amended to read:

"61-8-336. Turning movements and required signals. (1) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by 61-8-333 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(2) A signal of intention to turn right or left, other than when passing, when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning in any business, residence, or urban district as defined in 61-1-408 through 61-1-410.

(3) A signal of intention to turn right or left, other than when passing, when required shall be given continuously during not less than the last 300 feet traveled by the vehicle before turning in areas other than those set forth in subsection (2).

(4) A signal by hand and arm need not be given continuously by the person operating a bicycle if the hand is needed in the control or operation of the bicycle.

(5) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal."

Section 5. Section 61-8-338, MCA, is amended to read:

"61-8-338. Method of giving hand-and-arm signals. *(1) Except as provided in subsection (2), all* signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(a) Left turn. Hand and arm extended horizontally.

(b) Right turn. Hand and arm extended upward.

(c) Stop or decrease speed. Hand and arm extended downward.

(2) The person operating a bicycle may signal a right turn by extending the right hand and arm horizontally."

Section 6. Section 61-8-354, MCA, is amended to read:

"61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions. (1) No person shall stop, stand, or park a vehicle, except *as allowed under subsection (2) or* when necessary to avoid

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conflict with other traffic or in compliance with law or the directions of a police officer or highway patrolman or traffic-control device, in any of the following places:

(a) on a sidewalk;

(b) in front of a public or private driveway;

(c) within an intersection;

(d) within 15 feet of a fire hydrant;

(e) on a crosswalk;

(f) within 20 feet of a crosswalk at an intersection;

(g) within 30 feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;

(h) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;

(i) within 50 feet of the nearest rail of a railroad crossing;

(j) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance when properly signposted;

(k) alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(l) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(m) upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(n) at any place where official signs prohibit stopping.

(2) A bicycle may be parked on a sidewalk and other such places if the parking does not impede normal and reasonable movement of pedestrians or other traffic.

(3) A public bus stop may not be established in the areas described in subsections (1)(a) through (c) and (e). Otherwise, this section does not prohibit the establishment of public bus stops and the regulation of their use by a local government. Such a bus stop must be established by ordinance pursuant to a traffic and engineering study. Such establishment is subject to review and approval by the department of highways if the bus stop is to be established on a street or highway under its jurisdiction.

(4) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful."

Section 7. Section 61-8-368, MCA, is amended to read:

"61-8-368. Opening and closing vehicle doors. No person shall open *any* door of a motor vehicle unless and until it is reasonably safe to

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do so *without interfering with the movement of other traffic*, nor shall any person leave a door open on *a* side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers."

Section 8. Section 61-8-504, MCA, is amended to read:

"**61-8-504. Drivers to exercise due care.** Notwithstanding the foregoing provisions of this part, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian *or with any person operating a bicycle* upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway."

Section 9. Section 61-8-602, MCA, is amended to read:

"**61-8-602. Traffic laws applicable to persons operating bicycles.** Every person *operating* a bicycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of *any other* vehicle *chapter 7*, this chapter, and chapter 9 except as to special regulations in this part and except as to those provisions of *chapter 7*, this chapter, and chapter 9 which by their very nature can have no application."

Section 10. Section 61-8-604, MCA, is amended to read:

"**61-8-604. Clinging to vehicles.** No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any vehicle upon a roadway, *but a bicycle trailer or bicycle semitrailer may be attached to a bicycle if that trailer or semitrailer has been designed for such attachment.*"

Section 11. Section 61-8-605, MCA, is amended to read:

"**61-8-605. Riding on roadways and bicycle paths.** (1) *A* person operating a bicycle upon a roadway *at less than the normal speed of traffic at the time and place and under the conditions then existing* shall ride as near to the right side of the roadway as practicable *except when:*

(a) overtaking and passing another vehicle proceeding in the same direction;

(b) preparing for a left turn at an intersection or into a private road or driveway; or

(c) necessary to avoid a condition that makes it unsafe to continue along the right side of the roadway, including but not limited to a fixed or moving object, parked or moving vehicle, pedestrian, animal, surface hazard, or a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(2) A person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as close to the left side of the roadway as practicable.

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(3) Persons riding bicycles upon a roadway shall ride in single file except *when:*

(a) riding on paths or parts of roadways set aside for the exclusive use of bicycles;

(b) overtaking and passing another bicycle;

(c) riding on a paved shoulder or in a parking lane, in which case the persons may ride two abreast; or

(d) riding within a single lane on a laned roadway with at least two lanes in each direction, in which case the persons may ride two abreast if they do not impede the normal and reasonable movement of traffic more than they would otherwise impede such traffic by riding single file and in accordance with the provisions of this chapter.

(4) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. A person riding a bicycle defined in 61-1-123(2) is excluded from the provisions of this subsection when such bicycle is prohibited from using such paths.

(5) A bicycle, as defined in 61-1-123(2), is excluded from the provisions of subsections (1) and (2)."

Section 12. **Pedestrian's right-of-way on sidewalks.** The driver of a vehicle crossing a sidewalk shall yield the right-of-way to any pedestrian and all other traffic on the sidewalk.

Section 13. **Bicycles on sidewalks.** (1) A person operating a bicycle upon and along a sidewalk or across a roadway upon and along a crosswalk shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing any pedestrian.

(2) A person may not ride a bicycle upon and along a sidewalk or across a roadway upon and along a crosswalk where the use of a bicycle is prohibited by official traffic-control devices.

(3) Except as provided in subsections (1) and (2), a person operating a vehicle by human power upon and along a sidewalk or across a roadway upon and along a crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances.

Section 14. **Codification instruction.** Section 12 is intended to be codified as an integral part of Title 61, chapter 8, part 5, and section 13 is intended to be codified as an integral part of Title 61, chapter 8, part 6, and the provisions of Title 61, chapter 8, apply to sections 12 and 13.

Section 15. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1983.

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CHAPTER NO. 451

AN ACT TO PREVENT THE MANUFACTURE, SALE, POSSESSION FOR SALE, AND ADVERTISEMENT OF IMITATION DANGEROUS DRUGS; AUTHORIZING THE BOARD OF PHARMACISTS TO ADOPT RULES; CREATING EXEMPTIONS; AND PROVIDING PENALTIES; AMENDING SECTION 45-9-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 2 through 6 and 45-9-202, MCA], the following definitions apply:

(1) "Dangerous drug" has the meaning given to that term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that is not a dangerous drug, but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation.

Section 2. **Criminal sale of imitation dangerous drug — penalty.** (1) A person commits the offense of criminal sale of an imitation dangerous drug if he knowingly or purposely sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug.

(2) A person convicted of criminal sale of an imitation dangerous drug to a person 18 years of age or older shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person convicted of criminal sale of an imitation dangerous drug to a person under the age of 18 shall be imprisoned in the state prison for a term of not more than 10 years and may be fined not more than $50,000.

Section 3. **Criminal possession of imitation dangerous drug with purpose to sell — penalty.** (1) A person commits the offense of criminal possession of an imitation dangerous drug with purpose to sell if he possesses with purpose to sell any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug with purpose to sell shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person under 18 years of age convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

Section 4. **Criminal advertisement of imitation dangerous drug — penalty.** (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if he knowingly or purposely places

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in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

(2) A person convicted of criminal advertisement of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

Section 5. **Criminal manufacture of imitation dangerous drug — penalty.** (1) A person commits the offense of criminal manufacture of an imitation dangerous drug if he knowingly or purposely manufactures, prepares, or cultivates any imitation dangerous drug.

(2) A person convicted of criminal manufacture of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

Section 6. **Exemptions.** (1) [Sections 2 through 5] do not apply to:

(a) a person authorized by rules adopted by the board of pharmacists to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacists shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose.

Section 7. Section 45-9-202, MCA, is amended to read:

"45-9-202. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, *criminal sale of imitation dangerous drugs, criminal possession of imitation dangerous drugs with purpose to sell,* fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years."

Section 8. **Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 45, chapter 9, and the provisions of Title 45, chapter 9, apply to sections 1 through 6.

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Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 12, 1983.

CHAPTER NO. 452

AN ACT TO INCREASE THE LIMIT ON THE AMOUNT THAT A SCHOOL DISTRICT CAN EXPEND WITHOUT GOING THROUGH THE BID PROCESS; AMENDING SECTION 20-9-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by him in his official capacity or by the board of trustees of which he is a member; or

(b) be employed in any capacity by the school district of which he is trustee.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions which are in the business of loaning or receiving money when such investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services other than salaried services or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of such lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of *$7,500*, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number

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of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

(4) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids.

(5) Nothing in this section shall require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service which can be accomplished by district staff whose regular employment with such school district is related to the routine performance of maintenance for such district."

Approved April 12, 1983.

CHAPTER NO. 453

AN ACT CLARIFYING AND REVISING THE DEFINITION OF EARNED COMPENSATION FOR THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTION 19-4-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-101, MCA, is amended to read:

"**19-4-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-4-602(1). If the earned compensation includes any termination pay, the member shall select one of the following options:

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(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay such contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation. The amount of such compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service with the employer from whom this type of compensation was received to determine a yearly amount. The member and the employer must pay the regular contribution on the termination pay; or

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member.

(b) For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement *to a tax sheltered annuity or deferred compensation program* and *the value of any housing provided by the employer.* The employer shall fix the value of any *housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member.* The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year, *except that any termination pay, as defined in subsection (5)(b), received by the member is limited to the amount actually paid and is not the amount he would have earned had he completed the full year.*

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county

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superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 12, 1983.

CHAPTER NO. 454

AN ACT TO GENERALLY REVISE AND CLARIFY THE LICENSING LAW FOR PHYSICAL THERAPISTS; AMENDING SECTIONS 37-11-307 AND 37-11-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-11-307, MCA, is amended to read:

"37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to license as a physical

therapist, without examination, on the payment of the required fee as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory if the *applicant has met the same* requirements *as applicants licensed by examination under this chapter. Those applicants who have been licensed in another state or territory by examination other than the examination recognized under this chapter may be considered for licensure by the board if the requirements for a physical therapy license in the state or territory in which the applicant was tested were at least equal to those requirements in force in this state at that time.* However, the board may require a written, oral, or practical examination *and may require continued study or refresher courses.*"

Section 2. Section 37-11-310, MCA, is amended to read:

"**37-11-310. Foreign-trained applicants.** The foreign-trained physical therapist applicant's transcripts will be evaluated by *a board-approved agency which reviews credentials. Upon receipt of this evaluation the board shall determine whether the number of academic credits awarded meets equivalent educational standards for a physical therapist degree or certificate established by an American physical therapist association accredited school of physical therapy.* If the applicant's professional education credit hours are approved by the board, the applicant is eligible for a temporary license prior to examination."

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 12, 1983.

CHAPTER NO. 455

AN ACT AMENDING SECTIONS 30-13-202 AND 30-13-205, MCA, RELATING TO WHEN REGISTRATION OF AN ASSUMED BUSINESS NAME IS PROHIBITED; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-202, MCA, is amended to read:

"**30-13-202. Registration of assumed business name — when prohibited.** *(1)* When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or deceptively similar to an assumed business name already registered or to any corporate name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation or limited partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or

there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words."

Section 2. Section 30-13-205, MCA, is amended to read:

"30-13-205. When registration of assumed business name by foreign corporation or foreign limited partnership prohibited. No foreign corporation *or foreign limited partnership* which does not have an effective certificate of authority *or certificate of registration* to transact business in this state may register an assumed business name as provided for in this part."

Section 3. **Effective date.** This act is effective May 1, 1983.

Approved April 12, 1983.

CHAPTER NO. 456

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO BUSINESS AND NONPROFIT CORPORATIONS; AMENDING SECTIONS 35-1-213, 35-1-301, 35-1-303, 35-1-1006, 35-1-1020, 35-2-301, 35-2-805, AND 35-2-819, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-213, MCA, is amended to read:

"35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the *aggregate number* of its *shares, issued and unissued, itemized by class and series, if any, within each class, which the corporation has authority to issue* at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected."

Section 2. Section 35-1-301, MCA, is amended to read:

"35-1-301. Corporate name. (1) The corporate name:

(a) shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain an abbreviation of one of such words, *unless one of such words or an abbreviation thereof is added at the end of the corporate name*;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as or deceptively similar to *any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to* the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of

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its corporate name as provided in this chapter, except that this provision does not apply if the applicant files with the secretary of state either of the following:

(i) the written consent of such other corporation or holder of a reserved or registered name to use the name or a deceptively similar name with one or more words added to make such name distinguishable from such other name; or

(ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged or that is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease, or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of or is authorized to transact business in this state."

Section 3. Section 35-1-303, MCA, is amended to read:

"**35-1-303. Registration of corporate name.** (1) Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this chapter provided its corporate name is not the same as or deceptively similar to *any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to* the name of any domestic corporation existing under the laws of this state, the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this chapter.

(2) The name must contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(3) Such registration shall be made by:

(a) filing with the secretary of state:

(i) an application for registration, executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(ii) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations;

(b) paying to the secretary of state a registration fee in the amount of $1 for each month, or fraction thereof, between the date of filing such

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application and December 31 of the calendar year in which such application is filed.

(4) Such registration shall be effective until the close of the calendar year in which the application for registration is filed."

Section 4. Section 35-1-1006, MCA, is amended to read:

"35-1-1006. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) shall contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof;

(2) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

(3) shall not be the same as or deceptively similar to *any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to* the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision does not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(a) a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic corporation, to that of any foreign corporation authorized to transact business in this state, or to any name reserved or registered as provided in this chapter and which fictitious name is registered as an assumed business name under the provisions of Title 30, chapter 13, part 2;

(b) the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(c) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this state."

Section 5. Section 35-1-1020, MCA, is amended to read:

"35-1-1020. Issuance of notice of revocation — effect. (1) Upon revoking any such certificate of authority, the secretary of state shall:

(a) issue a *notice* of revocation in duplicate;

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(b) file one of such *notices* in his office;

(c) mail to such corporation at its registered office in this state *the duplicate* notice of revocation.

(2) Upon the issuance of such *notice* of revocation, the authority of the corporation to transact business in this state shall cease."

Section 6. Section 35-2-301, MCA, is amended to read:

"35-2-301. Corporate name. (1) The corporate name:

(a) must contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, unless one of such words or an abbreviation thereof is added at the end of the corporate name;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as or deceptively similar to *any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to* the name of any corporation, whether for profit or not for profit, existing under the laws of this state or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state or a corporate name reserved or registered as permitted by the laws of this state;

(d) shall be transliterated into letters of the English alphabet, if it is not in English.

(2) The exclusive right to the use of a corporate name may be reserved by filing in the office of the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of 120 days.

(3) The right to the exclusive use of a specified corporate name so reserved may be assigned by filing in the office of the secretary of state a notice of such assignment, executed by the person for whom such name was reserved and specifying the name and address of the transferee."

Section 7. Section 35-2-805, MCA, is amended to read:

"35-2-805. Corporate name. No certificate of authority *may* be issued to a foreign corporation unless the corporate name of such corporation:

(1) contains, or there is added at the end of the name, the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words;

(2) does not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

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(3) is not the same as or deceptively similar to *any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to* the name of any corporation, whether for profit or not for profit, existing under the laws of this state or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state or a corporate name reserved or registered as permitted by the laws of this state;

(4) is transliterated into letters of the English alphabet, if it is not in English."

Section 8. Section 35-2-819, MCA, is amended to read:

"35-2-819. Issuance of notice of revocation — effect. (1) Upon revoking any such certificate of authority, the secretary of state shall:

(a) issue a *notice* of revocation in duplicate;

(b) file one of such *notices* in his office;

(c) mail to such corporation at its registered office in this state *the duplicate* notice of revocation.

(2) Upon the issuance of such *notice* of revocation, the authority of the corporation to conduct affairs in this state shall cease."

Approved April 12, 1983.

CHAPTER NO. 457

AN ACT INCREASING THE ALLOWABLE RATE OF RETURN ON WARRANTS DRAWN ON THE SPECIAL ALLEY APPROACH FUND; AND INCREASING THE ALLOWABLE DURATION OF ASSESSMENTS FOR SIDEWALKS, CURBS, GUTTERS, AND ALLEY APPROACHES; AMENDING SECTIONS 7-14-4109 AND 7-14-4110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-4109, MCA, is amended to read:

"7-14-4109. Power to order certain improvements without creation of special improvement district. (1) Without the formation of a special improvement district, the city council may order sidewalks, curbs, or gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.

(2) Whenever the council orders any such sidewalk, curb, or gutter constructed or any such alley approach constructed or replaced, the order shall be entered upon the minutes of the council and shall name the street along which the sidewalk, curb, or gutter is to be constructed or along which the alley approach is to be constructed or replaced.

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(3) After the making of such order, written notice thereof shall be given the owner or agent of the owner of such property or the owners or agents of all adjacent owners having access to their properties by the alley approach, as appropriate, in such manner as the council may direct.

(4) If the owner or agent of the owner of such lot or parcel of land or if the owners or agents of all adjacent owners having access to their property by the alley approach fail or neglect for a period of 30 days after the date of service of the notice to cause such sidewalk, curb, or gutter to be constructed or to cause such alley approaches to be constructed or replaced, the city may construct or cause the sidewalk, curb, or gutter to be constructed or may construct or cause the alley approach to be constructed and shall assess the cost thereof, including engineering costs and the costs enumerated in 7-12-4121 and 7-12-4169, against the property in front of which the same is constructed or against the lots or parcels of land having access via the constructed alley approaches. The collection of the assessed costs shall be as provided in 7-12-4181 through 7-12-4191.

(5) (a) When any sidewalk, curb, or gutter or alley approach is constructed by or under direction of the city council, payment for the construction shall be made by special warrants in such form as may be prescribed by ordinance and drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund, as appropriate, and the council may provide for the payment of interest annually.

(b) The warrants drawn on the special alley approach fund shall bear interest at a rate *pursuant to 17-5-102.*"

Section 2. Section 7-14-4110, MCA, is amended to read:

"**7-14-4110. Assessments for costs.** (1) The payment of assessments to defray the cost of construction of the sidewalks, curbs, and gutters referred to in 7-14-4109 or any combination thereof or alley approach may be spread over a term of not to exceed *12* years, payment to be made in equal annual installments.

(2) The city council shall, annually before the first Monday of October, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs, and gutters or any combination thereof have been constructed under orders of the city council or each lot or parcel of land having access to said property via the alley approach which has been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts."

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 12, 1983.

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CHAPTER NO. 458

AN ACT ELIMINATING THE PROVISION ALLOWING MONTANA NATIONAL GUARDSMEN TO PARTICIPATE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTION 19-3-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-402, MCA, is amended to read:

"19-3-402. Federally subsidized employees eligible. A person whose compensation is paid either fully or in part from federal funds but who is not subject to the federal retirement system is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds."

Section 2. **Effective date.** This act is effective July 1, 1984.

Approved April 12, 1983.

CHAPTER NO. 459

AN ACT TO REQUIRE THAT IF THE BOARD OF LAND COMMISSIONERS ADOPTS RULES TO ESTABLISH THE MARKET VALUE OF CABIN SITE LICENSES AND LEASES, IT ADOPT A METHOD OF VALUATION OF CURRENT CABIN SITE LICENSES AND LEASES BASED UPON AN APPRAISED LICENSE OR LEASE VALUE AND A METHOD OF VALUATION OF INITIAL CABIN SITE LICENSES OR LEASES BASED UPON A SYSTEM OF COMPETITIVE BIDDING; AND PROVIDING FOR THE VALUATION, DISPOSAL, OR PURCHASE OF FIXTURES AND IMPROVEMENTS.

WHEREAS, on February 13, 1981, the Board of Land Commissioners proposed to adopt rules concerning surface licenses and leases for the use of state forest lands for recreational cabin sites by private individuals, which rules would have established the market value of recreational cabin site licenses and leases by a system of competitive bidding; and

WHEREAS, the rules would have allowed out-of-state interests and other parties to increase by competitive bidding the cost of current cabin site licenses and leases and would thereby have worked a hardship on or dispossessed current licensees and lessees and were therefore subsequently withdrawn by the Board; and

WHEREAS, the policy of this state for the leasing of state lands as provided in 77-1-202 is that the guiding principle in the leasing of state lands is "that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state"; and

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WHEREAS, allowing current cabin site licensees and lessees to continue to enjoy the benefits of existing licenses and leases and the benefits of their labor is a worthy object helpful to the well-being of the people of this state in that it promotes continuity in the care of state lands, promotes use of state lands by the public by granting a minimal expectation of continuing enjoyment, and promotes satisfaction with governmental processes.

THEREFORE, it is the intent of this bill to direct that if the Board of Land Commissioners adopts any rules under whatever existing rulemaking authority it may have to establish the market value of current cabin site licenses or leases, that the Board, in furtherance of the state policy expressed in 77-1-202, adopt a method of establishing the market values of cabin site licenses and leases which would not cause undue disruption to the lives and property of and useful enjoyment by current licensees and lessees.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Method of establishing market value for licenses and leases.** (1) If the board adopts, under any existing authority it may have on October 1, 1983, a method of establishing the market value of cabin site licenses or leases differing from the method used by the board on that date, the board shall under that authority establish a method for setting the market value of:

(a) each cabin site license or lease in effect on October 1, 1983, for each licensee or lessee who at any time wishes to continue or assign his license or lease, which method must be 5% of the appraisal of the license or lease value of the property, which value may be increased or decreased every fifth year by 5% of the change in the appraised value; and

(b) each initial cabin site license or lease, or current cabin site license or lease of a person who does not choose to retain the license or lease, which method must be based upon a system of competitive bidding, and thereafter for a person who wishes to retain that license or lease, under the method provided for in subsection (1)(a).

(2) If the board adopts, under whatever authority it may have on October 1, 1983, the method of valuation of cabin site licenses and leases required by this section, it shall also adopt under that same authority a method for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.

(3) Nothing in this section may be construed as a delegation of rulemaking authority to the board.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77 apply to section 1.

Approved April 12, 1983.

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CHAPTER NO. 460

AN ACT TO PROVIDE THAT THE COUNTY AND STATE EQUALIZATION APPORTIONMENT OF A SCHOOL DISTRICT BE REDUCED BY 1/90TH FOR EACH SCHOOL DAY THAT THE DISTRICT FAILS TO MEET THE REQUIREMENT OF 180 DAYS OF PUPIL INSTRUCTION EACH SCHOOL FISCAL YEAR; AMENDING SECTION 20-1-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-301, MCA, is amended to read:

"20-1-301. School fiscal year. The school fiscal year shall begin on July 1 and end on June 30. At least 180 school days of pupil instruction shall be conducted during each school fiscal year, except that 175 days of pupil instruction for graduating seniors may be sufficient as provided in 20-9-313, or unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title. *For any elementary or high school* district that fails to provide for at least 180 school days of pupil instruction, *the superintendent of public instruction shall reduce the county equalization as defined in 20-9-334 and the state equalization as defined in 20-9-343 for the district for that school year by 1/90th for each school day less than 180 school days.*"

Section 2. **Coordination.** If House Bill 99 is passed by the 48th legislature and approved, the following further amendments are made in section 1:

(1) In the amended language of the last sentence, following "school year by", "1/90th" is replaced with "an amount equivalent to 2 days of such aid".

(2) In the amended language of the last sentence, following "school day less than", "180" is replaced with "the required number of".

Approved April 12, 1983.

CHAPTER NO. 461

AN ACT TO DEFINE THE TERMS "DEAF/BLIND", "MULTIHANDICAPPED", AND "RELATED SERVICES" AS THEY RELATE TO THE LAWS GOVERNING SPECIAL EDUCATION OF HANDICAPPED PERSONS IN MONTANA; AMENDING SECTION 20-7-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Appropriate public education" means the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped are met.

(2) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(3) "Deaf/blind" means concomitant hearing and visual impairments, the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for deaf or blind children.

(4) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains, or fears associated with personal or school problems. The term does not include children who are socially maladjusted. The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required. These behavioral patterns may include:

(a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;

(b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and

(c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment.

(5) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, emotionally disturbed, *deaf/blind, multihandicapped,* orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services.

(6) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included within the definition of deaf.

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(7) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(8) "Multihandicapped" means concomitant impairments (e.g., mentally retarded/blind or mentally retarded/orthopedically impaired), the combination of which causes such severe educational problems for the child so impaired that the child cannot be accommodated in a special education program designed solely for one of the impairments. The term does not include deaf/blind children.

(9) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy).

(10) "Other health-impaired" means:

(a) having an autistic condition that is manifested by severe communication and other developmental and educational problems; or

(b) having limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(11) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes speech pathology, audiology, occupational therapy, and physical therapy.

(12) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(13) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps; mental retardation; or environmental, cultural, or economic disadvantages.

(14) "Speech/language impaired" means a communication disorder such as stuttering, impaired articulation, or a language or voice impairment which adversely affects a child's interpersonal relationships or educational performance.

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(15) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children."

Approved April 12, 1983.

CHAPTER NO. 462

AN ACT ALLOWING A LOGGING TRUCK OF UP TO 80,000 POUNDS TO OPERATE UNDER A SPECIAL PERMIT; AMENDING SECTION 61-10-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

"61-10-124. Special permits — fee. (1) Except as provided in subsection (2)(b), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department.

(2) (a) Except as provided in subsection (2)(b), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 85 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 13 ½ feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fee required by 61-10-203 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this

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title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 12, 1983.

CHAPTER NO. 463

AN ACT TO AMEND SECTION 85-7-1956, MCA, TO ALLOW AN ELECTION TO RATIFY AUTHORITY FOR AN IRRIGATION DISTRICT TO CONTRACT WITH THE UNITED STATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1956, MCA, is amended to read:

"85-7-1956. Majority vote or petition necessary to contract with United States. No contract shall be made with the United States hereunder except *upon approval of a majority of those voting on the question at an election conducted pursuant to 85-7-1710 provided that the voting majority must own at least 50% of the acreage included within the district or* upon a petition signed by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within the district. Such petition shall be addressed to the board of commissioners, shall set forth the aggregate amount of money to be borrowed from the United States and the purpose or purposes thereof, shall have attached thereto an affidavit certifying the signatures to said petition, and shall be filed with the secretary of the board of commissioners. Such petition may consist of one or more parts or papers."

Approved April 13, 1983.

CHAPTER NO. 464

AN ACT TO REVISE AND CLARIFY CERTAIN SECTIONS RELATING TO AGRICULTURAL SEED; AMENDING SECTIONS 80-5-101, 80-5-102, 80-5-104, 80-5-107, 80-5-112, AND 80-5-201 THROUGH 80-5-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-5-101, MCA, is amended to read:

"80-5-101. Definitions. Terms used in this part and not otherwise identified are hereby defined:

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(1) Agricultural seeds *are* the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds and include lawn seeds and mixtures of seeds.

(2) Vegetable seeds include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(3) Flower seeds include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and are commonly known and sold under the name of flower seeds in this state.

(4) Indigenous seeds include the seeds of those plants that are naturally adapted to an area where the intended use is for revegetation of disturbed sites. These species include grasses, forbs, shrubs, and legumes.

(5) (a) The term "weed seeds" *includes* the seeds or bulblets of all plants generally recognized as weeds within this state and *includes* noxious weed seeds.

(b) Noxious weed seeds are divided into two groups defined as follows:

(i) "Prohibited noxious weed seeds" are the seeds of perennial and other serious weeds that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts and which, when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds include the seeds of:

Canada thistle	(Cirsium arvense)
leafy spurge	(Euphorbia esula)
hoary cress	(Cardaria draba)
quackgrass	(Agropyron repens)
Russian knapweed	(Centaurea repens)
perennial sowthistle	(Sonchus arvensis)
field bindweed	(Convolvulus arvensis)
dalmatian toadflax	(Linaria dalmatica)
halogeton	(Halogeton glomeratus)
medusa-head wildrye	(Elymus caput-medusae)
creeping bellflower	(Campanula rapunculoides)
yellow toadflax	(Linaria vulgaris)

(ii) "Restricted noxious weed seeds" are the seeds of weeds that are very objectionable in fields, lawns, and gardens of this state but can be controlled by good cultural practices. Restricted noxious weed seeds include the seeds of:

dodder	(Cuscuta spp.)
blue lettuce	(Lactuca pulchella)
St.-Johnswort	(Hypericum perforatum)
oxeye daisy	(Chrysanthemum leucanthemum)
spotted knapweed	(Centaurea maculosa)
hoary alyssum	(Berteroa incana)
wild oats	(Avena fatua)
buckhorn plantain	(Plantago lanceolata)

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chickweed	(Stellaria spp.)
curly dock	(Rumex crispus)

(6) The term "hybrid" applied to kinds of varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) two or more inbred lines;

(b) one inbred or a single cross with an open pollinated variety; or

(c) two or more selected clones, seed lines, varieties, or species.

(7) "Controlling the pollination" means to use a method hybridization which will produce pure seed which is at least 75% hybrid seed. Hybrid designations shall be treated as variety names.

(8) The terms "approximate percentage" and "approximate number" mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the association of official seed analysts.

(9) The term "percentage of germination" *means* the percentage of seeds which show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the "rules for seed testing" adopted by the association of official seed analysts.

(10) The term "percentage viability" refers to the percentage of live seed capable of producing a normal seedling under optimum growing conditions, after all forms of dormancy have been overcome, if present.

(11) The term "name of state in which the seed was grown" *means* any of the several states of the United States or the foreign country.

(12) The term "labeling" means to affix, before offering the seed for sale, in a conspicuous place on the exterior of the container a written or printed label, in the English language, giving the required information.

(13) The term "other crop seeds" *means* any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(14) The term "sell" *includes* "offer for sale", "expose for sale", "have in possession for sale", "exchange", "barter", or "trade". It also *includes* agricultural seeds *that* are furnished to growers for the production of a crop on contract.

(15) The term "certifying agency" means:

(a) an agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department to adhere to procedures and standards for seed certification comparable to

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those adhered to generally by seed certifying agencies under subsection *(15)*(a) of this section.

(16) The term "protected variety" means a variety for which a certificate has been issued by the U.S. plant variety protection office or for which an application for protection has been filed granting the owner or his authorized agent exclusive rights in the sale and distribution of the variety."

Section 2. Section 80-5-102, MCA, is amended to read:

"80-5-102. Labeling of agricultural seeds. *Any person offering for sale a* package, parcel, or lot of agricultural seeds, as defined in 80-5-101, that contains 1 pound or more of agricultural seeds, whether in package or in bulk, *must have affixed to it a label* specifying:

(1) a lot number or other distinguishing mark;

(2) kind. The name of each kind of seed present in excess of 5% shall be shown on the label and need not be accompanied by the word "kind". When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

(3) variety, as follows:

(a) the following kinds of agricultural seeds shall be labeled to show the variety name or the words "variety not stated":

alfalfa
barley
bean, field
beet, field
brome, smooth
clover, crimson
clover, red
clover, white
corn, field
corn, pop
fescue, tall
flax
millet, foxtail
oat
pea, field
rye
safflower
sorghum
sorghum-sudan hybrid
soybean
sudan grass
sunflower
trefoil, birdsfoot
wheat, common
wheat, durum

(b) if the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety". The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5% and are named on the label, the name of each variety shall be accompanied by the percentage of each.

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(4) that the seed is hybrid, if any one kind or kind and variety of seed present in excess of 5% is "hybrid" seed. The percentage that is hybrid shall be at least 95% of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of 5% and are named on the label, each that is hybrid shall be designated as "hybrid" on the label. No one kind or variety of seed may be labeled as "hybrid" if the pure seed contains less than 75% hybrid seed. Any one kind or kind and variety that has pure seed which is less than 95% but more than 75% hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show:

(a) the percentage of pure seed that is hybrid seed; or

(b) a statement such as "Contains from 75% to 95% hybrid seed";

(5) state or country of origin, if known, of alfalfa, red clover, white clover, native range grasses, and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(6) the approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination and stated as "total germination and hard seed".

(7) the approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds;

(8) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds;

(9) the approximate total percentage by weight of weed seeds;

(10) the approximate percentage by weight of other crop seeds in agricultural seeds;

(11) the name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of agricultural, vegetable, or flower seeds;

(12) the full name and address of the seedsman, importer, dealer or agent, or other person, firm, or corporation selling the agricultural seed;

(13) in the case of mixtures of agricultural seeds which contain two or more kinds of seed in excess of 5% by weight of each, when sold as mixtures:

(a) name of mixture;

(b) name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of 5% by weight of the total mixture;

(c) approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds;

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(d) approximate percentage by weight of weed seeds as defined in 80-5-101;

(e) approximate percentage by weight of other crop seeds in the mixture of agricultural seeds;

(f) name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions as specified in 80-5-105;

(g) approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of 5% by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed".

(h) full name and address of the vendor of the mixture."

Section 3. Section 80-5-104, MCA, is amended to read:

"80-5-104. Labeling of vegetable, flower, and indigenous seeds. *(1)* Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

(a) each container of 1 pound or less:

(i) the commonly accepted name of the kind or the kind and variety of the seed;

(ii) the name and address of the person who labeled the seed or who sells the seed within this state;

(iii) the name and number per pound of each kind of restricted noxious weed seeds as prescribed in 80-5-105;

(iv) in the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:

(A) the percentage of germination;

(B) the percentage of hard seed, if more than 1%;

(C) the month and year the test to determine the data required by this section was completed;

(D) the words "below standard germination" in not less than 8-point boldface type;

(b) each container of more than 1 pound:

(i) the name of the kind and variety of the contents;

(ii) the lot numbers or other lot identification;

(iii) the name and number per pound of each kind of restricted noxious weed seeds as prescribed in 80-5-105;

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(iv) the percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act;

(v) the percentage of hard seed, if more than 1%;

(vi) the month and year the test to determine the data required by this section was completed;

(vii) the name and address of the person who labeled the seed or who sells the seed within this state.

(2) Indigenous seeds, as defined in 80-5-101, in amounts of 1 pound or more, whether in package or bulk, must be labeled with the following information:

(a) the statement "Labeled only for reclamation purposes";

(b) lot number or other distinguishing mark;

(c) the common name, genus, species, and subspecies when applicable, including the name of each kind of seed present in excess of 5%. When two or more kinds of seed are named on the label, the label shall specify the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage must apply to seed of the kind named. If the name of the variety is given, the name may be associated with the name of the kind. The percentage in this case may be shown as "pure seed" and must apply only to seed of the variety named.

(d) state or country of origin, if known. If the origin is unknown, that fact shall be stated.

(e) the approximate percentage of viable seed, together with the date of test. When labeling mixtures, the percentage viability of each kind shall be stated.

(f) the approximate percentage by weight of pure seed, meaning the freedom of seed from inert matter and from other seeds;

(g) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter;

(h) the approximate total percentage by weight of other seeds;

(i) the name and approximate number of each kind of species of restricted noxious weed seeds occurring per pound of seed;

(j) the full name and address of the person, firm, or corporation selling the seed."

Section 4. Section 80-5-107, MCA, is amended to read:

"80-5-107. Exemptions. Agricultural seeds or mixtures of same shall be exempt from the provisions of this part:

(1) when possessed, exposed for sale, or sold for food purposes only;

(2) when sold to merchants or dealers to be *conditioned* before being sold or offered for sale for seeding purposes;

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(3) when in store for the purpose of *conditioning* or not possessed, sold, or offered for sale for seeding purposes within the state."

Section 5. Section 80-5-112, MCA, is amended to read:

"80-5-112. Enforcement — rules. The department shall administer and enforce 80-5-101 through 80-5-113. For that purpose, the department may adopt rules. The department may issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural seed which the department finds in violation of 80-5-101 through 80-5-113. The order shall prohibit further sale of the seed until the department has evidence that the law has been complied with. The seed may not be confiscated or destroyed. Upon proper correction, by *reconditioning*, labeling, or otherwise, and when, in the judgment of the department, the requirements of 80-5-101 through 80-5-113 have been met, the stop sale order shall be lifted and the seed may be sold. The department shall adopt all necessary rules relating to the agricultural experiment station's duties under 80-5-101 through 80-5-113."

Section 6. Section 80-5-201, MCA, is amended to read:

"80-5-201. Definitions. When used in this part, the following definitions apply:

(1) "Agricultural seed" means the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds and includes lawn seeds and mixtures of seeds.

(2) "Bin-run seed sales from one farmer to another farmer" means buyer beware.

(3) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the certifying agency.

(4) "Person" means any individual, firm, partnership, corporation, or association.

(5) "Public agricultural seed warehouse" means any warehouse or structure in which agricultural seed is received from the public for storage, assembling, or cleaning.

(6) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or *conditioning*.

(7) "Seed buyer" means any person engaged in the business of buying agricultural seed for shipment, cleaning, processing, or resale and who does not own, control, or operate a public agricultural seed warehouse. Any individual employed by a seed buyer is not included in this term.

(8) "Seed dealer" means any person who offers for sale, sells, or barters agricultural seeds to the ultimate consumer.

(9) "Seed labeler" means any person affixing labels to agricultural seeds with his name and address listed as required in 80-5-102 when such seed is distributed in Montana.

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(10) "Seed *conditioning* plant" means any place of business that repackages, *conditions*, blends, treats, or otherwise manipulates agricultural seeds.

(11) "Seed warehouseman" means any person owning, controlling, or operating a public agricultural seed warehouse."

Section 7. Section 80-5-202, MCA, is amended to read:

"80-5-202. Licensing — issuance — application — fee — bonding — insurance. (1) All seed *conditioning* plants, seed labelers, seed buyers, and public agricultural seed warehouses shall obtain a license from the department before doing business in this state; however, a Montana certified seed grower, when *conditioning* or labeling certified seed from his own production, is not required to be licensed under this *part*. Bin-run seed sales from one farmer to another are exempt from this part.

(2) All licenses are issued on a fiscal-year basis and expire on June 30 of each year. A license may cover any or as many as all four activities: *conditioning* plant, seed labeler, seed buyer, and public agricultural seed warehouse.

(3) Application for license is made in a manner and on forms provided by the department. A nonresident shall file a written power of attorney designating the secretary of state as his agent, and the power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over the nonresident applicant. A nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as his agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.

(4) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

(5) Each license shall cost no more than $50 a year. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.

(6) Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a license by the department, provided the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(7) The department may by rule establish bonding and insurance requirements for each class of license."

Section 8. Section 80-5-203, MCA, is amended to read:

"80-5-203. Dealer's license — exception — fee — application — violation. (1) No person may distribute seed without obtaining a dealer's license from the department for each place of business. No license is required of a person who distributes seeds only in sealed packages of less

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than 10 pounds, packed by a licensed seed labeler and bearing his name and address. Each dealer's license shall cost no more than $20 a year and expires on June 30 of each year. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.

(2) Application for a dealer's license shall be made in a manner and on forms provided by the department. Such forms shall require among other things the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(3) Violation of provisions of this section or the distribution of agricultural seeds not legally labeled constitutes adequate grounds for canceling a license or denying a license to a dealer."

Section 9. Section 80-5-204, MCA, is amended to read:

"80-5-204. Screenings — restrictions on movements. All screenings whether from seed *conditioning* plants or other sources represent both a valuable and potentially hazardous product. Their movements are restricted as follows:

(1) The viability of prohibited noxious weed seed as defined in 80-5-101 shall be destroyed before screenings are utilized in feed or in any other way in which they may propagate their kind. However, if these screenings are sold for feed, it shall be the responsibility of the feed buyer to haul under a tarp cover or other tight container until the provisions of this part are met.

(2) The department has authority to issue rules to restrict or exempt from restriction the holding and movement of screenings when the public interest is served by so doing."

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 13, 1983.

CHAPTER NO. 465

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO YOUTH; PLACING THE AUTHORITY FOR COMMUNITY-BASED RESIDENTIAL SERVICES FOR YOUTH UNDER THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; AMENDING SECTIONS 20-15-403, 41-3-104, 41-3-105, 41-3-405, 41-3-407, 41-3-501 THROUGH 41-3-504, 41-5-103, 41-5-306, 41-5-403, 41-5-523, 41-5-801, 41-5-802, 41-5-805, 53-2-201, 76-2-313, AND 76-2-314, MCA; REPEALING SECTIONS 41-5-803 AND 41-5-901 THROUGH 41-5-924, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-201, MCA, is amended to read:

"53-2-201. Powers and duties of department. (1) The department shall:

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(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including:

(i) importation and exportation of children;

(ii) licensing of all children's foster family homes, group homes, child-care agencies and child-placing agencies;

(iii) the care of dependent and neglected children in substitute care placement and children who are free for adoption;

(iv) the maintenance of supplemental day care for children; *and*

(v) all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and state programs for youth in need of care, youth in need of supervision, and delinquent youth;

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administation of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(g) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(h) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

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(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 2. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means *any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.*

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

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(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in 41-3-102.

(15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena, and Swan River youth forest camp.

(18) "Shelter care" means the temporary *substitute* care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary *substitute* care of youth in physically restricting facilities.

(20) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding.

(21) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian. Nothing in this definition is intended to include juvenile correctional facilities, evaluation facilities, mental health facilities and services, and aftercare programs operated by the department of institutions."

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Section 3. Section 41-5-306, MCA, is amended to read:

"41-5-306. Place of shelter care or detention. (1) A youth alleged to be a delinquent youth or youth in need of supervision may be sheltered only in:

(a) a licensed *youth* foster home *as defined in [section 7]*;

(b) a facility operated by a licensed child welfare agency; *or*

(c) a licensed *youth group* home *as defined in [section 7].*

(2) The youth may be detained in a jail or other facility for the detention of adults only if:

(a) the facilities in subsection (1) are not available or do not provide adequate security;

(b) the detention is in an area physically and visually separate and removed from those of adults;

(c) it appears to the satisfaction of the court that public safety and protection reasonably require detention; and

(d) the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses."

Section 4. Section 41-5-403, MCA, is amended to read:

"41-5-403. Disposition permitted under informal adjustment. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth *for substitute care into a youth care facility as defined in [section 7] or into a* home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place the youth in a state correctional facility, and such commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearing;

(e) restitution upon approval of the youth court judge.

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(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim, however the ability of the victim or his insurer to stand any loss may not be considered in any case."

Section 5. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place *the youth for substitute care into a youth care facility as defined in [section 7]* or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth;

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth 16 years or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not

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to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may consider advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b).

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name Address Occupation

.....

.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge"

Section 6. **Establishment of substitute care for youth.** The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of supervision of this state and of the desirability of meeting these needs on a communi v level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide such facilities and services through local nonprofit corporations and the department of social and rehabilitation services.

Section 7. **Definitions.** For the purposes of this part the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of social and rehabilitation services.

(3) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(4) "Treatment facility" is a child-care agency providing the appropriate level of care.

(5) "Youth care facility" means a facility, licensed in accordance with 41-3-502 through 41-3-504, in which substitute care is provided to youth in need of care, youth in need of supervision, or delinquent youth and includes youth foster homes, youth group homes, and child-care agencies.

(6) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth to whom the foster parents are not related by blood, marriage, adoption, or wardship.

(7) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

Section 8. **Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

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(e) in cooperation with the department of institutions and youth care facility providers, develop and implement standards for youth care facilities;

(f) apportion and allocate placement budgets to all judicial districts;

(g) seek public input on the plan prior to its adoption and implementation; and

(h) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in district youth guidance homes, shelter care programs, and foster care homes for youths committed to the department of institutions who need to be placed in such facilities. Youths committed to the department of institutions and placed in residential facilities other than those described above shall not be the financial responsibility of the department of social and rehabilitation services unless such placements have been approved in advance by the department of social and rehabilitation services.

Section 9. **Allocation of money to judicial districts.** (1) The department shall allocate placement budgets, based upon historical placement patterns and current placement trends, to the judicial districts for the substitute care of youth in need of supervision or delinquent youth.

(2) The placement budgets may be monitored by a youth court committee as provided for in 41-5-105 or a foster care review committee as provided for in 41-5-807.

Section 10. Section 41-5-801, MCA, is amended to read:

"41-5-801. Foster care payments for youth court placements. (1) The youth court may establish procedures for finding, maintaining, and administering shelter care and foster homes approved by the court for youth within the provisions of this chapter.

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(2) Pursuant to 41-3-104, the department shall *make a foster care payment for a child placed* by the youth court if:

(a) the *child* is *placed in a youth care facility* licensed by the department *or by an appropriate licensing authority from another state*;

(b) the youth court enters into an agreement according to federal regulations with the department for the placement of children;

(c) the placement of the child is reviewed as required by 41-5-807; and

(d) the youth court retains supervision of the child in placement."

Section 11. Section 41-3-104, MCA, is amended to read:

"41-3-104. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county. (1) Whenever agreements are entered into by the department *or the court* for placing a youth in need of care, *a youth in need of supervision, or a delinquent youth* in a *youth care* facility, the department shall pay by its check or draft each month from any funds appropriated for that purpose the entire amount agreed upon for board, clothing, personal needs, *treatment,* and room of the children.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the children for no more than one-half the payments so made during the month. The county must make reimbursement to the department within 20 days after the claim is presented.

(3) The department shall conduct or arrange for the review required under 41-5-807 of a child placed in a *youth care* facility if the child is placed under the supervision of the department or placed by the department or the department pays for the care of the child as set forth in this section."

Section 12. Section 41-3-405, MCA, is amended to read:

"41-3-405. Investigation of parents' or guardian's financial ability. (1) Whenever a court determines a youth to be an abused, neglected, or dependent child pursuant to 41-3-404, the court shall issue an order directing the county welfare department of the county in which the petition was filed to conduct an investigation of the financial status of the child's parents or the extent of guardianship assets.

(2) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the child and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the child in a *youth care* facility. A written report of the investigation shall be filed with the clerk of court before the time fixed for the dispositional hearing.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time set for the dispositional hearing."

Section 13. Section 41-5-805, MCA, is amended to read:

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"41-5-805. Financial investigation by county welfare department. (1) Whenever a disposition under 41-5-403, 41-5-523, or 41-5-524 involves placement in a *youth care* facility and the department is responsible for all or part of the cost of such placement, the probation officer or the court shall notify the department and order the county welfare department in the youth's county of residence to conduct an investigation of the financial status of the youth's parents or guardianship assets. Following an adjudicatory hearing in which a youth is determined to be a delinquent youth or a youth in need of supervision, the court may order the county welfare department to conduct a financial status investigation.

(2) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the youth and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the youth in the foster home, child care agency, group home, or private treatment facility. A written report of the investigation shall be filed with the court having jurisdiction, the department of social and rehabilitation services, and the department of institutions, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding."

Section 14. Section 41-3-407, MCA, is amended to read:

"41-3-407. Order for financial support. (1) Whenever a youth is placed in a *youth care* facility under 41-3-406, the court shall determine the ability of the youth's parents or guardian to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. This question of financial ability shall be considered at the dispositional hearing, and evidence concerning financial status may be introduced. In determining financial ability the court shall consider the report prepared pursuant to 41-3-405 and any other evidence introduced at the dispositional hearing.

(2) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the court may modify the order."

Section 15. Section 41-3-105, MCA, is amended to read:

"41-3-105. Recovery from parents or guardianship assets — division between state and county. (1) In the event any recovery is made from the parent or parents or guardianship assets of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

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(2) Any amount collected from the parents or guardianship assets when a child is placed in a *youth care* facility shall be transmitted to the department of social and rehabilitation services. The department shall then pay to the county one-half of the amount so collected."

Section 16. Section 41-3-501, MCA, is amended to read:

"41-3-501. Definitions. (1) Any person owning or operating a *youth care facility* into which he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, nor ward shall be deemed to be an "operator" of a *"youth care facility"* within the meaning of this chapter, except that this chapter shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(2) The word "person" where used in this chapter shall include any individual, partnership, voluntary association, or corporation."

Section 17. **Rules.** The department may adopt rules to carry out the administration and purposes of this part.

Section 18. **Power of nonprofit corporations to establish homes and to receive facilities and funds.** Nonprofit corporations or associations may be formed or organized for the purpose of establishing youth care facilities or to provide community-based services and to receive from the department and other governmental units such services, facilities, training, and funds as the department or other governmental units may be authorized by law to provide.

Section 19. **Governmental contracts with nonprofit organizations.** (1) The department may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities and is authorized to expend such money as is appropriated or available therefor. Such contracts shall be based on the following considerations:

(a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;

(b) reasonable costs of service;

(c) appropriation level; and

(d) availability of funds.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized, at their own expense, to provide funds, materials, facilities, and services for community-based services.

Section 20. Section 41-3-502, MCA, is amended to read:

"41-3-502. License required. No person shall maintain or operate a *youth care facility* for any child or children within the meaning of this

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chapter without first securing a license in writing from the department. No fee shall be charged for such license."

Section 21. Section 41-3-503, MCA, is amended to read:

"**41-3-503. Issuance of license — authority of issuing agency.** The department is hereby authorized to issue licenses to persons *operating youth care facilities* and to prescribe the conditions upon which such licenses shall be issued and to make such rules as it may deem advisable for the operation and regulation of *such facilities* for minor children consistent with the welfare of such children. Such licensing agency shall have the power and authority to inspect all such licensed *facilities* through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules. The person operating such homes shall give to such representative such information as may be required and afford him every reasonable *opportunity* for observing the operation of such homes."

Section 22. Section 41-3-504, MCA, is amended to read:

"**41-3-504. Penalty.** Any person who maintains or *operates* a *youth care facility* or assists in *operating* or maintaining such *facility* without having first obtained a license in writing as hereto provided shall be guilty of a misdemeanor."

Section 23. **Petition for placement in facility or home.** Any person between the ages of 18 and 21 years, who is still within the jurisdiction of the youth court, or any person under the age of 18 years may petition the youth court of a district in which a youth care facility has been established to be placed in such a facility or in any other home approved by the court for any period of time up to the person's 21st birthday.

Section 24. **Authority of judge to commit youth.** A youth court judge may in his discretion place a delinquent youth or a youth in need of supervision in a youth care facility for any period of time up to the child's 21st birthday, subject to the approval of the facility's sponsoring nonprofit corporation or association.

Section 25. **Continuing jurisdiction of youth court.** The youth court placing a delinquent youth or a child in need of supervision in a youth care facility retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by order of the court.

Section 26. **Aftercare facilities.** (1) The department of institutions may establish, maintain, and administer youth correction facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department.

(2) Aftercare facilities are under the licensing authority of the department.

Section 27. Section 20-15-403, MCA, is amended to read:

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"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2215, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-18-108, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-102, 18-1-105, 18-1-112, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-408, 18-5-205, 19-1-102, 19-1-602, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, *[section 19]*, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 28. Section 76-2-313, MCA, is amended to read:

"76-2-313. Definition of community residential facility. "Community residential facility" means:

(1) a group, foster, or other home specifically provided as a place of residence for developmentally disabled or handicapped persons who do not require nursing care;

(2) a youth *group* home *as defined in [section 7]*;

(3) a halfway house operated in accordance with regulations of the department of health and environmental sciences for the rehabilitation of alcoholics or drug dependent persons; or

(4) a licensed adult foster family care home."

Section 29. Section 76-2-314, MCA, is amended to read:

"76-2-314. Relationship of foster homes, youth group homes, and community residential facilities to zoning. (1) A foster or *youth group* home operated under the *provisions* of 41-3-501 through 41-3-504 or community residential facility serving eight or fewer persons is considered a residential use of property for purposes of zoning if the home provides care on a 24-hour-a-day basis.

(2) The homes are a permitted use in all residential zones, including but not limited to residential zones for single-family dwellings. Any safety or sanitary regulation of the department or any other agency of the state or political subdivision thereof which is not applicable to residential occupancies in general may not be applied to a community residential facility serving eight or fewer persons.

(3) Nothing in this section shall be construed to prohibit a city or county from requiring a conditional use permit in order to maintain a

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home pursuant to the provisions of this section provided such home is licensed by the department of health and environmental sciences and the department of social and rehabilitation services."

Section 30. **Administration.** The provisions of Title 41, chapter 3, part 11, govern the administration of this chapter.

Section 31. **Codification and code commissioner instructions.** (1) Section 30 is intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to section 30.

(2) Sections 6, 7, 8, 9, 17, 18, 19, and 23 through 26 are intended to be codified as a new part 11 in Title 41, chapter 3, and the provisions of Title 41, chapter 3, apply to such sections.

(3) (a) Sections 41-3-405 and 41-5-805, MCA, are to be combined.

(b) Sections 41-3-407 and 41-5-806, MCA, are to be combined.

(c) The sections enumerated in subsections (3)(a) and (b) are to be combined into single sections. They are intended to be renumbered and recodified as integral parts of Title 41, chapter 3, part 11, and the provisions of Title 41, chapter 3, apply to them. Such sections, when combined, may not contain redundant subsections.

(4) Sections 41-3-104, 41-3-105, 41-3-501 through 41-3-504, 41-5-302, 41-5-801, 41-5-804, and 41-5-807, MCA, are intended to be recodified and renumbered as an integral part of Title 41, chapter 3, part 11, and the provisions of Title 41, chapter 3, apply to those sections.

(5) The code commissioner is authorized to change internal references in the MCA to reflect the renumbering and recodification required by this section.

Section 32. **Repealer.** Sections 41-5-803 and 41-5-901 through 41-5-924, MCA, are repealed.

Section 33. **Effective date.** This act is effective on July 1, 1983.

Approved April 13, 1983.

CHAPTER NO. 466

AN ACT TO REQUIRE A GRANT OF RULEMAKING AUTHORITY WITH EACH STATUTE ENACTED OR AMENDED IF IT IS TO BE IMPLEMENTED BY AN ADMINISTRATIVE RULE; AMENDING SECTIONS 2-4-305 AND 5-4-402, MCA; AND PROVIDING AN APPLICABILITY CLAUSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall consider fully written and oral

submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the Montana administrative register, the differences must be described in the statement of reasons for and against agency action. When no written or oral submissions have been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language.

(3) Each proposed and adopted rule shall include a citation to the specific grant of rulemaking authority pursuant to which it or any part thereof is adopted. *A rule proposed and adopted to implement a statute referred to in 5-4-402(3) must include a citation to the session laws of Montana containing the specific grant of rulemaking authority pursuant to which it or any part thereof is adopted.* In addition, each proposed and adopted rule shall include a citation to the specific section or sections in the Montana Code Annotated which the rule purports to implement.

(4) Each rule proposed and adopted by an agency implementing a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy, as used in the definition set forth in 2-4-102(10), and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

(7) No rule is valid unless adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption thereof is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases."

Section 2. Section 5-4-402, MCA, is amended to read:

"5-4-402. Purpose. *(1)* The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of

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state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies.

(2) The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

(3) A statute enacted or amended may not be implemented by an administrative rule, even in an area in which a state agency has existing rulemaking authority, unless the statute enacted or amended is accompanied by a delegation of authority extending such authority to the statute as enacted or amended."

Section 3. **Applicability.** This act applies to statutes enacted or amended after October 1, 1983.

Approved April 13, 1983.

CHAPTER NO. 467

AN ACT REQUIRING COUNTY CLERKS AND RECORDERS TO CHARGE FOR EACH ENTRY INSTEAD OF FOR EACH INDEX FOR DOCUMENTS REQUIRING MULTIPLE INDEXING; CLARIFYING THAT COPIES OF BIRTH OR DEATH CERTIFICATES FOR WHICH A $2 CHARGE IS IMPOSED MUST BE CERTIFIED; RAISING THE FEE FROM $2 A PAGE TO $2.50 A PAGE FOR DOCUMENTS RECORDED BY MECHANICAL MEANS; AMENDING SECTIONS 7-4-2631 AND 7-4-2632, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2631, MCA, is amended to read:

"7-4-2631. Fees of county clerk. (1) The county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $2;

(d) for filing and indexing each certificate of fictitious name, $3;

(e) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(f) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(g) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $1;

(h) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(i) for administering an oath with certificate and seal, no charge;

(j) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(k) for documents requiring multiple indexing (including but not limited to mortgages; releases; deeds; certificates of location; affidavits of annual labor on mining claims; assignments of leases; assignments of mortgages; oil, gas, and mineral leases; releases of oil, gas, and mineral leases; assignments of overriding royalties; executions; lis pendens; attachments; and all liens), 50 cents per *entry* in excess of the first *entry* contained in a single document;

(l) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed in those sections;

(m) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service;

(o) for each *certified* copy of a birth certificate or a death certificate, $2.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. These fees must be paid by a state agency on a monthly basis."

Section 2. Section 7-4-2632, MCA, is amended to read:

"7-4-2632. Fee when recording done by mechanical means. Where recording is done by photographic or similar process, the county clerk and recorder shall charge *$2.50* for each page or fraction of a page of the instrument for recording."

Approved April 13, 1983.

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CHAPTER NO. 468

AN ACT TO CLARIFY THE METHOD FOR CALCULATING THE COST-OF-LIVING ADJUSTMENT TO A RETIREMENT ALLOWANCE FOR A MEMBER OF THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; TO ENSURE PAYMENT OF A RETIREMENT ALLOWANCE TO CERTAIN FIREFIGHTERS WHOSE EMPLOYMENT IS INVOLUNTARILY TERMINATED; TO PROVIDE AN ALTERNATIVE METHOD FOR CALCULATING THE COST-OF-LIVING ADJUSTMENT FOR A RETIREE FROM A CITY NO LONGER EMPLOYING A NEWLY CONFIRMED FULL-PAID FIREFIGHTER; AMENDING SECTIONS 19-13-1006 AND 19-13-1007, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Termination of participation in plan or reduction of employer contributions.** (1) If a city voluntarily terminates its contributions in the plan or significantly reduces the number of full-paid firefighters it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of plan members, the board shall request as part of the actuarial valuation required in 19-13-504 an actuarial investigation of the funding status of the city.

(2) Based on the actuarial investigation, the board may request and the city shall pay annually an amount needed to provide adequate funding for the city. This amount must be in addition to any other contributions required by the retirement act.

(3) Six years after the actuarial investigation is conducted, a city making payments as provided in subsection (2) may request the board to review the city's funding status relative to the annual payments. As a result of the review, the board may adjust the payments.

Section 2. Section 19-13-1006, MCA, is amended to read:

"19-13-1006. Supplement to certain retirement allowances. *(1)* The plan shall pay to each firefighter retired before July 1, 1973, or his surviving spouse *or* children a monthly retirement allowance of not less than one-half the regular monthly salary paid to a confirmed active firefighter of the city that last employed him as a firefighter, as provided each year in the budget of that city. *If the city that last employed him as a firefighter no longer employs a full-paid firefighter, the firefighter's or his beneficiary's allowance may not be less than one-half the average regular monthly salary paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter.* In the case of volunteer firefighters, the retirement allowance may not exceed $75 per month. Distribution of the *money* provided for this purpose under 19-11-606(1) shall be made *according to subsection (2).*

(2) At the beginning of each fiscal year the administrator shall request and the state auditor shall issue from the earmarked revenue fund and

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deliver to the administrator an amount certified to be equal to the total annual dollar difference between *the total retirement allowances paid to all retirees or their surviving spouses or children in the previous fiscal year and the total benefits payable on June 30, 1973.* The administrator shall *deposit this money into the fund.*"

Section 3. Section 19-13-1007, MCA, is amended to read:

"19-13-1007. Allowance adjustment. (1) For a member *retiring* on or after July 1, 1973, *who was hired* before July 1, 1981, *or* his surviving spouse or dependent children, the service retirement allowance provided in 19-13-704(1)(a), the disability retirement allowance provided in 19-13-803(1), and the survivorship allowance provided in 19-13-902(1) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed him as a firefighter, as provided each year in the budget of that city.

(2) For a member hired on or after July 1, 1981, *or* his surviving spouse or dependent children, the disability retirement allowance provided in 19-13-803(2) and the survivorship allowance provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed him as a firefighter, as provided each year in the budget of that city.

(3) If after a member retires, the city that last employed him no longer employs a full-paid firefighter, the member's or his beneficiary's allowance under subsections (1) and (2) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter.

(4) If the employment of a vested member hired before July 1, 1981, is involuntarily discontinued before he reaches age 50 because of the termination of employment of all full-paid firefighters in the city that employed him, his service retirement allowance provided in 19-13-704(1)(b) and his spouse's or dependent child's survivorship allowance provided in 19-13-902(1) may not be less than:

(a) if the member has completed 20 years or more of service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter; or

(b) if the member has completed more than 10 but less than 20 years of service, 2% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter, for each year of the member's service.

(5) In lieu of the benefit adjustment provided in subsection (4), a member may elect to receive an early retirement allowance beginning upon termination of employment that is the actuarial equivalent of the accrued portion of the service retirement allowance that would have been payable to him beginning at age 50."

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Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 19, chapter 13, and the provisions of Title 19, chapter 13, apply to section 1.

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved April 13, 1983.

CHAPTER NO. 469

AN ACT TO CHANGE THE ELIGIBILITY CRITERIA FOR ADMISSION TO THE MONTANA VETERANS' HOME; ELIMINATING CONVICTION OF A FELONY, CONVICTION OF A CRIME OF MORAL TURPITUDE, ALCOHOLISM, AND NONDISABILITY AS DISQUALIFICATIONS; ADDING OTHER QUALIFICATIONS; AND AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO ESTABLISH ADDITIONAL ADMISSION REQUIREMENTS; AMENDING SECTION 10-2-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-403, MCA, is amended to read:

"**10-2-403. Eligibility for residence in home.** To be eligible for residence in the Montana veterans' home under the regulations prescribed by the department of institutions, a person *must* be an honorably discharged veteran or the spouse or surviving spouse of a veteran who served in the armed forces of the United States. *Consideration must also be given to:*

(1) the person's age;

(2) the person's physical and mental status;

(3) the person's ability or inability to locate suitable alternative accommodations;

(4) the person's term of residence in Montana;

(5) the person's gender as it relates to availability of appropriate living space;

(6) the ability of the Montana veterans' home to meet the person's needs; and

(7) such other admission requirements as may be established by the department."

Approved April 13, 1983.

CHAPTER NO. 470

AN ACT MAKING WORKERS' COMPENSATION COVERAGE MANDATORY FOR INDEPENDENT CONTRACTORS WHO ARE NOT CONTRACTING FOR AGRICULTURAL SERVICES TO BE PERFORMED ON A FARM OR RANCH OR FOR BROKER OR SALESMAN SERVICES TO BE PERFORMED IN A REAL ESTATE BUSINESS AND PROVIDING FOR AN OPTIONAL EXEMPTION FROM COVERAGE; REQUIRING EMPLOYERS TO POST SIGNS GIVING NOTICE OF EMPLOYER'S COVERAGE AND PROVIDING A FINE; AMENDING SECTION 39-71-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership *other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch or for broker or salesman services performed under a license issued by the board of realty regulation*;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter.

(3) A sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor and who is not contracting for agricultural services to be performed on a farm or

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ranch or for broker or salesman services performed under a license issued by the board of realty regulation must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself. The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor. When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(4) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment regardless of whether the location is temporary or permanent and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Approved April 13, 1983.

CHAPTER NO. 471

AN ACT TO PROHIBIT HEALTH SERVICE CORPORATION MEMBERSHIP PLANS FROM DISALLOWING PAYMENT TO A DENTIST FOR CARE OR SERVICES IN AREAS WHERE MEDICINE AND DENTISTRY OVERLAP IF THE DENTIST IS LICENSED TO PERFORM SUCH CARE OR SERVICE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Dentists performing services where medicine and dentistry overlap.** A contract or plan may exclude coverage for dental care or services, but no individual or group membership contract or plan issued or renewed on or after October 1, 1983, may disallow payment to a dentist for health care or services for which a physician would be paid provided the dentist is licensed under the law of this state to perform such care or service.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 33, chapter 30.

Approved April 13, 1983.

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CHAPTER NO. 472

AN ACT TO ALLOW COUNTIES TO ISSUE REVENUE BONDS IN THE MANNER PROVIDED IN TITLE 7, CHAPTER 7, PART 44, FOR ISSUANCE OF MUNICIPAL REVENUE BONDS; AND TO ALLOW COUNTIES TO REFUND REVENUE BONDS IN THE MANNER PROVIDED IN TITLE 7, CHAPTER 7, PART 45 OR PART 46, FOR REFUNDING OF MUNICIPAL REVENUE BONDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authority to issue revenue bonds — refunding revenue bonds.** (1) A county may issue county revenue bonds in the same manner and with the same effect as provided in chapter 7, part 44, of this title for issuance of municipal revenue bonds. County revenue bonds may be issued to finance any project or activity enumerated in chapter 16, part 21, or chapter 34, part 22 or 23, of this title. Revenues from the project for which the bonds are issued are the only revenues upon which a lien under the provisions of 7-7-4431 shall apply. No lien shall attach to other revenues or other property within the county.

(2) A county may refund revenue bonds issued under the authority provided in subsection (1) by the method provided in either part 45 or part 46 of chapter 7.

(3) In construing, for purposes of this section, the provisions of parts 44, 45, or 46 of chapter 7, "municipai" is considered to refer to the county and "governing body" is considered to refer to the board of county commissioners whenever the board of county commissioners is acting pursuant to subsection (1).

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 7.

Approved April 13, 1983.

CHAPTER NO. 473

AN ACT TO GENERALLY REVISE AND CLARIFY THE CONSERVATION DISTRICT LAWS; TO ESTABLISH A CONSERVATION PRACTICE LOAN PROGRAM; AMENDING SECTIONS 76-15-301, 76-15-311, 76-15-313, 76-15-319, 76-15-501, 76-15-502, 76-15-512, 76-15-515 THROUGH 76-15-517, 76-15-523, 76-15-524, 76-15-527, AND 76-15-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-15-301, MCA, is amended to read:

"76-15-301. Establishment of supervisor areas. *(1)* The conservation district is authorized to divide the unincorporated area of the district into *no more than* five supervisor areas.

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(2) Each supervisor area must be represented by one supervisor. If less than five supervisor areas are established, sufficient supervisors must be elected at large to complete the governing body of the district as provided in 76-15-311(1)."

Section 2. Section 76-15-311, MCA, is amended to read:

"**76-15-311. Governing body of district.** (1) If there are no incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of five elected supervisors.

(2) If there are incorporated municipalities within the boundaries of the district, the governing body of the district shall consist of seven supervisors as follows:

(a) The board of supervisors, in addition to five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall appoint the two additional supervisors after consultation with the elected supervisors. The term of office of the appointed supervisors shall be 3 years.

(b) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein.

(3) The board of supervisors may appoint associate supervisors it considers necessary to advise the board of supervisors on the operation of the conservation district as provided in part 4 of this chapter."

Section 3. Section 76-15-313, MCA, is amended to read:

"**76-15-313. Operation of supervisors.** (1) The supervisors shall annually elect a chairman from their members.

(2) A majority of the supervisors constitute a quorum, and *except as otherwise specifically provided,* the concurrence of a majority in any matter within their duties is required for its determination.

(3) *Upon the unanimous approval of the board of supervisors,* a supervisor may receive compensation for his services, including travel expenses as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties. *However, no supervisor may receive compensation for attendance at a regularly scheduled meeting of the board of supervisors.*"

Section 4. Section 76-15-319, MCA, is amended to read:

"**76-15-319. Legal assistance.** (1) The supervisors may call upon the county attorney of the county in which the greatest portion of the district is located or the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff.

(2) If the county attorney is unable to provide legal assistance because of a conflict of interest, then the matter may be referred to the attorney general or the department of natural resources and conservation."

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Section 5. Section 76-15-502, MCA, is amended to read:

"76-15-502. Allocation of state funds among districts. (1) Unless otherwise provided by law, all money which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized or to be organized during the ensuing biennial fiscal period.

(2) In making allocations of the money, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section, 76-15-503, and 76-15-504 from time to time among districts which may be organized after the initial allocations are made but within the ensuing biennial fiscal period."

Section 6. Section 76-15-515, MCA, is amended to read:

"76-15-515. Maximum regular assessment. The regular assessment in any one year shall not exceed 1 ½ mills on the dollar of total taxable valuation of real property within the district. The valuation shall be determined according to the last assessment roll."

Section 7. Section 76-15-516, MCA, is amended to read:

"76-15-516. Levy of regular and special assessment. (1) The board of county commissioners of each county in which there lies any portion of the district may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. It shall be known as the ".... (name of district) conservation district regular assessment" and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

(2) The board of county commissioners of each county in which there lies any portion of a project area may, annually at the time of levying county taxes, levy an assessment not to exceed 3 mills on the taxable real property within the project area. It shall be known as ".... (name of the project area) special assessment" and shall be sufficient to raise the amount reported to them in the estimate of the supervisors."

Section 8. Section 76-15-517, MCA, is amended to read:

"76-15-517. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting 15% for anticipated delinquencies from the total assessed value of the taxable real property in the district and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of $100, it shall be taken as a full cent."

Section 9. Section 76-15-523, MCA, is amended to read:

"76-15-523. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district. *The district may receive upon demand all or a portion of the district funds from the county treasury and deposit the funds in a bank or financial institution in such account as the board of supervisors considers appropriate for the operation and administration of the district.*"

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Section 10. Section 76-15-804, MCA, is amended to read:

"76-15-804. Petition to discontinue all or part of a district. (1) At any time after 5 years after the organization of a district under this chapter, 10% *or more of the* qualified electors within the boundaries of the district may file a petition with the department praying that the board terminate the operations of the district or a part of the district and discontinue the existence of the district or that part of the district.

(2) The department may conduct such public meetings and public hearings upon the petition as are necessary to assist it and the board in the consideration thereof."

Section 11. **Conservation practice loan program.** (1) A conservation district may establish and administer a conservation practice loan program pursuant to [sections 11 through 17].

(2) A conservation practice loan may be made to a land occupier who is an agriculture producer within the exterior boundaries of the district. The conservation practice must be constructed, operated, developed, and maintained within the district.

(3) A conservation practice is the construction, operation, development, or maintenance of an erosion control and prevention operation, a work of improvement for flood prevention, and the conservation, development, use, and disposal of water within a district in furtherance of the purposes and policies of this chapter. Conservation practices include those practices pertaining to acceptable land use conversion as determined by a majority of the district supervisors with the advice of the United States soil conservation service.

Section 12. **Conservation practice loan account.** (1) The supervisors of a district may allocate a portion of the regular assessment for each fiscal year to a segregated and separate conservation practice loan account within the treasury of the principal county for the purpose of providing funds for conservation practice loans.

(2) Conservation practice loan repayments, including principal and interest, and administrative fees or charges for loans must be deposited in the conservation practice loan account.

(3) The funds in the conservation practice loan account may be used for conservation practice loans and for the administrative expenses of a conservation practice loan program.

Section 13. **Application for loan.** (1) An application for a loan must be in the form prescribed by the district supervisors and contain or be accompanied by any information necessary to adequately describe the proposed conservation practice and necessary for evaluation of the proposed conservation practice under the criteria contained in [sections 14 and 15].

(2) The application must include a conservation plan, which may be prepared in consultation with the United States soil conservation service.

Section 14. **Eligibility for loan.** A district may award a loan to a land occupier to finance a conservation practice only if a majority of the

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district supervisors find, based on the application and the supervisors' investigation and evaluation of the proposal, that:

(1) the conservation practice will be economically feasible;

(2) the conservation practice will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(3) the applicant has adequate financial resources to construct, operate, develop, and maintain the conservation practice; and

(4) the applicant is credit-worthy and is able and willing to enter into a contract with the district for loan repayment and for construction, operation, development, and maintenance of the proposed conservation practice.

Section 15. **Criteria for evaluation of loan applicants — preferences.** (1) The district supervisors shall apply the following criteria in ranking applications for a conservation practice loan that is eligible for funding under [section 14]:

(a) the extent and desirability of the conservation need and resource benefit as determined in the district's annual and long-range plans;

(b) the feasibility and practicality of the project;

(c) the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and recreation;

(d) the extent and desirability of associated public benefits in addition to any private benefits the project or activity may provide; and

(e) any other factor that, in the district supervisors' judgment, is important to the evaluation of the conservation practice in light of the purposes, policies, and objectives of this chapter.

(2) Among applications for a loan in which the proposed conservation practices are substantially equal in ranking under subsection (1), a district shall give preference to:

(a) applicants who have not previously received a conservation practice loan; and

(b) applications for a group or cooperative conservation practice.

Section 16. **Terms and conditions of loan.** A conservation practice loan is subject to the following terms and conditions:

(1) The district shall obtain such security interest in real estate as would be obtained by a reasonable, careful, and prudent lender.

(2) The term of the loan may not be greater than the life of the project, and in no case may it exceed 30 years.

(3) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at his expense. All costs incident to the loan and loan closing, other than administrative costs of the district, must be paid by the borrower.

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(4) A conservation practice must be completed according to United States soil conservation service standards and specifications, if applicable.

Section 17. **Rules.** The district shall adopt rules in accordance with the Montana Administrative Procedure Act:

(1) prescribing the form and content of applications for loans and plans for the resource conservation practice;

(2) governing the application of the criteria and preferences for awarding loans;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted;

(5) prescribing the conditions for making loans;

(6) establishing the interest rate for the loans; and

(7) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.

Section 18. Section 76-15-501, MCA, is amended to read:

"76-15-501. Financial management. A conservation district and the supervisors thereof shall have the power to:

(1) borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness;

(2) also refund or retire an indebtedness or lien that may exist against the district or property thereof;

(3) fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities, and materials furnished or provided, and revenues from these sources may be expended in carrying out the purposes and provisions of this chapter;

(4) cause taxes to be levied in the same manner provided for in this part for the purpose of paying any obligation of the district and to accomplish the purposes of this chapter in the manner herein provided;

(5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;

(6) establish a conservation practice loan program as provided in this part."

Section 19. Section 76-15-512, MCA, is amended to read:

"76-15-512. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district *and to fund a conservation practice loan program in those districts having elected to establish such a program.*"

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Section 20. Section 76-15-524, MCA, is amended to read:

"76-15-524. Receipt and crediting of district funds — responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district *and for all loan repayments and administrative fees or charges under a conservation practice loan program* and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this part and part 6, of the money of the district held by him."

Section 21. Section 76-15-527, MCA, is amended to read:

"76-15-527. Purpose of expenditures. All money collected under 76-15-511 through 76-15-526 shall be expended for the purposes provided in 76-15-502 and 76-15-503 *and for an established conservation practice loan program."*

Section 22. **Codification instruction.** Sections 11 through 17 are intended to be codified as an integral part of Title 76, chapter 15, part 5, and the provisions of Title 76, chapter 15, part 5, apply to sections 11 through 17.

Section 23. **Effective date.** This act is effective on passage and approval.

Approved April 13, 1983.

CHAPTER NO. 474

AN ACT TO AUTHORIZE THE DEPARTMENT OF HIGHWAYS TO ENTER INTO BILATERAL AGREEMENTS WITH AN ADJOINING STATE OR PROVINCE FOR THE COLLECTION OF FEES AND TAXES BY EITHER STATE OR PROVINCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authority for department to enter into bilateral agreements.** The department may negotiate and enter into a bilateral agreement with an official of an adjoining state or province to provide for the collection by either party state or province of highway user fees, registration fees, permit fees, fuel taxes, or any other fees and taxes that may be prescribed by law or rule. An agreement may further provide for the construction and joint operation of ports of entry along state borders.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 60, chapter 2, part 3, and the provisions of Title 60 apply to section 1.

Approved April 13, 1983.

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CHAPTER NO. 475

AN ACT TO ALLOW AN ELEMENTARY SCHOOL THAT ANTICIPATES AN ANB OF AT LEAST 14 BUT LESS THAN 18 PUPILS TO APPLY FOR INSTRUCTIONAL AIDE FUNDING AND TO RECEIVE AN APPROPRIATE MAXIMUM GENERAL FUND BUDGET AMOUNT; AMENDING SECTIONS 20-9-316 AND 20-9-318, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Maximum general fund budget for elementary schools of fourteen through seventeen pupils — instructional aide funding.** (1) Any elementary school that anticipates an ANB of at least 14 but less than 18 pupils for the ensuing school fiscal year may determine the maximum general fund budget amount under the provisions of 20-9-316(3) or 20-9-318(3) if eligibility is approved in accordance with the following provisions:

(a) No later than May 10 of each year, the school district shall submit its application for approval for instructional aide funding to the superintendent of public instruction. The application shall include:

(i) the previous year's ANB;

(ii) an estimate of the current school fiscal year's ANB, as calculated under the provisions of 20-9-314(1), and the number of grade levels being taught on May 1 of the current year;

(iii) an estimate of the ANB and the number of grade levels anticipated for the ensuing school fiscal year;

(iv) the factual information on which such estimates are based; and

(v) any other information or data that may be required by the superintendent of public instruction.

(b) The superintendent of public instruction shall immediately review all the factors of the application and shall approve the application if the anticipated ANB is at least 14 but less than 18 pupils and a minimum of five grade levels are being taught as of May 1 of the current year or documentation is provided which indicates that the anticipated ANB will require a minimum of five grade levels to be taught in the ensuing school year.

(2) Whenever a school district applies for and is approved for instructional aide funding under the provisions of subsection (1) the district must hire an instructional aide.

(3) For the purposes of this section, the term "instructional aide" means:

(a) a person who is under the direct supervision of a teacher; or

(b) a certified teacher.

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Section 2. Section 20-9-316, MCA, is amended to read:

"20-9-316. Elementary school maximum budget schedule for 1981-82. (1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be $15,578 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be $15,578 plus $651 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under [section 1], the maximum shall be $26,533 plus $651 per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be $21,438 plus $651 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be $34,227 plus $407.70 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of $1,513 shall be decreased at the rate of $1.47 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of $1,424 shall be decreased at the rate of $1.34 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed $1,156 for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 3. Section 20-9-318, MCA, is amended to read:

"20-9-318. Elementary school maximum budget schedule for 1982-83 and succeeding years. (1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be $17,915 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be $17,915 plus $748.70 per pupil on the basis of the average number belonging over nine.

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(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under [section 1], the maximum shall be $29,358 plus $748.70 per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be $24,654 plus $748.70 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be $39,361 plus $468.90 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of $1,740 shall be decreased at the rate of $1.69 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of $1,638 shall be decreased at the rate of $1.54 for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed $1,329 for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 9, part 3, and the provisions of Title 20 apply to section 1.

Section 5. **Coordination.** If House Bill 544 is passed by the 48th Legislature and approved, the dollar amounts amended into this act are to be increased by the same percentage that dollar amounts are increased in House Bill 544 as follows:

(1) the dollar amounts amended into 20-9-316 by this act are to be increased by the same percentage that the dollar amounts in 20-9-316(2) were increased by its amendment in House Bill 544; and

(2) the dollar amounts amended into 20-9-318 by this act are to be increased by the same percentage that the dollar amounts in 20-9-318(2) were increased by its amendment in House Bill 544.

Section 6. **Effective date.** This act is effective July 1, 1983.

Approved April 14, 1983.

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CHAPTER NO. 476

AN ACT ALLOWING COUNTIES TO ADD A MAXIMUM OF 3 PERCENT OF THE PRINCIPAL TO ANY BOND OR WARRANT ISSUED TO COVER INCIDENTAL OR GENERAL FUND EXPENSES; AMENDING SECTION 7-12-2153, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2153, MCA, is amended to read:

"7-12-2153. Incidental expenses considered as cost of improvements. *(1)* The cost and expense connected with and incidental to the formation of any special improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; and preparation of assessment rolls, shall be considered a part of the cost and expenses of making the improvements within such special improvement district.

(2) The original costs of any improvement may, at the option of the local governing body, include an amount not to exceed 3% of the principal amount of any bonds or warrants to be issued, which shall be deposited in the revolving fund created in 7-12-2181 or deposited in the county general fund."

Approved April 14, 1983.

CHAPTER NO. 477

AN ACT AMENDING SECTIONS 5-1-101, 5-1-106, AND 5-1-108 THROUGH 5-1-111, MCA, TO PROVIDE STATUTORY CONFORMITY TO THE CONSTITUTIONAL AMENDMENT TO ACCELERATE MONTANA'S CONGRESSIONAL REDISTRICTING PROCESS; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-1-101, MCA, is amended to read:

"5-1-101. Commission to redistrict and reapportion. In each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare *the plans* for redistricting and reapportioning the state into legislative and congressional districts."

Section 2. Section 5-1-106, MCA, is amended to read:

"5-1-106. Legislative council to provide technical and clerical services. The executive director of the legislative council, under the direction of the commission, shall provide the technical staff and clerical services which the commission needs to prepare its districting and apportionment *plans*."

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Section 3. Section 5-1-108, MCA, is amended to read:

"5-1-108. Public hearing on plans. *(1) Before the commission files its final congressional redistricting plan with the secretary of state, the commission shall hold at least one public hearing on it.*

(2) Before the commission submits its *legislative redistricting* plan to the legislature, it shall hold at least one public hearing on the plan at the state capitol.

(3) The commission may hold other hearings as it deems necessary."

Section 4. Section 5-1-109, MCA, is amended to read:

"5-1-109. Submission of plan for legislative redistricting to legislature. The commission shall submit its *legislative redistricting* plan to the legislature by the 10th legislative day of the first regular session after its appointment or after the census figures are available."

Section 5. Section 5-1-110, MCA, is amended to read:

"5-1-110. Recommendations of legislature. Within 30 days after the commission submits its *legislative redistricting* plan to the legislature, the legislature shall return the plan to the commission with its recommendations."

Section 6. Section 5-1-111, MCA, is amended to read:

"5-1-111. Final plans — dissolution of commission. *(1) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.*

(2) Within 30 days after receiving the *legislative redistricting* plan and the legislature's recommendations, the commission shall file its final *legislative redistricting* plan with the secretary of state *and it* shall become law.

(3) Upon filing both plans, the commission shall be dissolved."

Section 7. **Contingent effective date.** This act becomes effective October 1, 1985, if House Bill No. 151, which requires a constitutional amendment to accelerate Montana's congressional redistricting, is passed by the legislature and approved by the electorate. If the legislature does not pass House Bill No. 151 or the electorate does not approve the constitutional amendment, this act is void.

Approved April 14, 1983.

CHAPTER NO. 478

AN ACT TO ALLOW SCHOOL DISTRICTS TO USE AN ACCRUAL ACCOUNTING SYSTEM FOR BUDGETED FUNDS; AMENDING SECTION 20-9-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-209, MCA, is amended to read:

"20-9-209. Lapse of budgeted appropriations and provision for unpaid claims. *(1)* All appropriations for a budgeted fund in the regular or emergency budget for a given school fiscal year shall lapse on the last day of such school fiscal year except the appropriations for:

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(a) uncompleted improvements in progress of construction; *and*

(b) any obligation for the purchase of personal property ordered but not paid for during the current fiscal year and recorded with the county treasurer in the manner and on forms prescribed by the superintendent of public instruction.

(2) Any lawful claim presented to the district for payment under a lapsed appropriation shall be an obligation of the budget for the next ensuing school fiscal year."

Approved April 14, 1983.

CHAPTER NO. 479

AN ACT TO PROVIDE THAT THE TRUSTEES OF ANY SCHOOL DISTRICT WHEN ACTING IN THEIR OFFICIAL CAPACITY ARE INDIVIDUALLY IMMUNE FROM LIABILITY FOR EXEMPLARY AND PUNITIVE DAMAGES; AMENDING SECTION 20-3-332, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-332, MCA, is amended to read:

"20-3-332. Personal immunity and liability of trustees. *(1) When acting in their official capacity at a regular or special meeting of the board or a committee thereof, the trustees of each district are individually immune from exemplary and punitive damages.*

(2) The trustees of each district shall be responsible for the proper administration and utilization of all moneys of the district in accordance with the provisions of law and this title. Failure or refusal to do so shall constitute grounds for removal from office. Those trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails."

Approved April 14, 1983.

CHAPTER NO. 480

AN ACT TO RENEW THE TAX CREDIT FOR INSTALLING ALTERNATIVE ENERGY SYSTEMS; AMENDING SECTION 15-32-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-201, MCA, is amended to read:

"15-32-201. Amount of credit — to whom available. A resident individual taxpayer who completes installation of an energy system using

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a recognized nonfossil form of energy generation, as defined in 15-32-102, in such taxpayer's principal dwelling prior to December 31, *1986*, or who acquires title to a dwelling prior to December 31, *1986*, which dwelling is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of such system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 ½% of the next $3,000 of the cost of such system, including installation costs, less grants received against the income tax liability imposed against such taxpayer pursuant to chapter 30."

Section 2. **Amount of credit — to whom available.** (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in such taxpayer's principal dwelling prior to December 31, 1986, or who acquires title to a dwelling prior to December 31, 1986, which dwelling is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of such system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 ½% of the next $3,000 of the cost of such system, including installation costs, less grants received against the income tax liability imposed against such taxpayer pursuant to chapter 30.

(2) If a credit is claimed under subsection (1) it may not also be claimed under [SB 283].

Section 3. **Taxable years in which credit may be claimed — carryover.** The tax credit is to be deducted from the taxpayer's income tax liability for the taxable year in which the energy system was acquired by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability. Notwithstanding the foregoing provision, no tax credit may be carried over for deduction after the fourth taxable year succeeding the taxable year in which the energy system was acquired.

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 15, chapter 32, part 2, and the provisions of Title 15, chapter 32, part 2, apply to sections 2 and 3.

Section 5. **Coordination instruction.** (1) If SB 283 is passed and approved, including the section that repeals 15-32-201 and 15-32-202, then sections 2, 3, and 4 of this act are effective.

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(2) If SB 283 is not passed and approved or if passed and approved it does not repeal 15-32-201 and 15-32-202, then sections 2, 3, and 4 of this act are not effective.

Section 6. **Applicability.** This act applies to taxable years beginning after December 31, 1982.

Approved April 14, 1983.

CHAPTER NO. 481

AN ACT TO ALLOW THE TRUSTEES OF A SCHOOL DISTRICT TO REQUEST THE COUNTY ELECTION ADMINISTRATOR TO CONDUCT A SCHOOL ELECTION; AMENDING SECTION 20-20-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Request of county election administrator to conduct election.** (1) By June 1 of each year, the trustees of any district may request the county election administrator to conduct certain school elections during the ensuing school fiscal year.

(2) Whenever the county election administrator agrees to conduct a school election, he shall:

(a) perform the duties imposed on the trustees and the clerk of the district for school elections in 20-20-203, 20-20-313, and 20-20-401;

(b) conduct the election in accordance with the provisions of Title 13, chapters 13 and 15; and

(c) deliver to the trustees, for the purpose of canvassing the vote, the certified tally sheets and other items as provided in 13-15-301.

(3) Whenever the trustees request the county election administrator to conduct a school election, the school district shall pay the costs of the election as provided in 13-1-302.

Section 2. Section 20-20-401, MCA, is amended to read:

"20-20-401. Trustees' election duties — ballot certification. (1) The trustees are the general supervisors of school elections *unless the trustees request and the county election administrator agrees to conduct a school election under [section 1].*

(2) Not less than 15 days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. The clerk shall arrange for printing the ballots. Names of candidates on school election ballots need not be rotated.

(3) The trustees are authorized to and shall administer oaths to election judges.

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(4) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 20, chapter 20, and the provisions of Title 20 apply to section 1.

Approved April 14, 1983.

CHAPTER NO. 482

AN ACT TO ESTABLISH THE OFFENSE OF CRIMINAL POSSESSION OF A TOXIC SUBSTANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Criminal possession of toxic substances — penalty.** (1) A person commits the offense of criminal possession of a toxic substance if he inhales or ingests or possesses with the purpose to inhale or ingest, for the purpose of altering his mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

(2) The provisions of subsection (1) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

(3) A person convicted under this section shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed $500, or both.

(4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 45, chapter 9, part 1, and the provisions of Title 45 apply to section 1.

Approved April 14, 1983.

CHAPTER NO. 483

AN ACT TO SHORTEN THE TIME PERIOD WITHIN WHICH PAYMENT OF TIME DEPOSITS MAY NOT BE REQUIRED; AMENDING SECTION 32-1-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-109, MCA, is amended to read:

"32-1-109. Definitions. Unless the context requires otherwise the following definitions apply:

(1) "Board" means the state banking board provided for in 2-15-1803.

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(2) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(3) "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

(4) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

(7) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

(8) "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits which, when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

(9) "Time deposits" means all deposits, the payment of which cannot legally be required within *14* days.

(10) "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1983.

CHAPTER NO. 484

AN ACT TO REQUIRE THE STATE TO PAY A CLAIM WITHIN 30 DAYS OR WHEN SPECIFIED IN A CONTRACT OR AGREEMENT; AND TO PROVIDE FOR INTEREST ON THE UNPAID BALANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Services" means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by the state or any agency thereof.

(2) "Supplies" means all personal property purchased, leased, or contracted for by the state or any agency thereof, including leases of equipment. The term also includes leases of buildings or other real property by the state or any agency thereof.

Section 2. **Interest assessed on amounts due.** (1) Except as provided in [section 3], a state agency shall pay simple interest at the rate of

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0.05% each day, on amounts due for supplies and services received if the agency fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 30 days after receipt of a properly completed invoice, addressed to the payer agency, or receipt of the supplies or services by the agency, whichever is later.

Section 3. **Exemptions.** [Section 2] does not apply to the following:

(1) interagency or intergovernmental transactions;

(2) claims subject to a good faith dispute;

(3) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the payer agency;

(4) contracts entered into before [the effective date of this act];

(5) wages due and payable to state employees or payments from any state retirement system created pursuant to Title 19; or

(6) claims submitted to the state or to its fiscal intermediary by providers of supplies or services under the Montana medicaid or workers' compensation program if reasonable cause for nonpayment exists.

Section 4. **Source for payment of interest.** Any interest owing under [sections 1 through 4] must be paid from funds designated for administrative costs of the agency receiving the supplies and services unless the delay was caused by a different agency, and then the interest must be paid from the administrative costs of that agency.

Section 5. **Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 17, and the provisions of Title 17 apply to sections 1 through 4.

Approved April 14, 1983.

CHAPTER NO. 485

AN ACT TO DEFINE UNFAIR LABOR PRACTICES BY HEALTH CARE FACILITIES AND LABOR ORGANIZATIONS REPRESENTING NURSES; TO ESTABLISH PROCEDURES FOR ADJUDICATING UNFAIR LABOR PRACTICES CHARGES; AND TO RESOLVE APPROPRIATE UNIT AND REPRESENTATION QUESTIONS CONSISTENT WITH THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING PROVISIONS; AMENDING SECTIONS 39-32-102 THROUGH 39-32-106 AND 39-32-109, MCA; AND REPEALING SECTIONS 39-32-107, 39-32-108, AND 39-32-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-32-102, MCA, is amended to read:

"39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

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(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(4) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees as defined in this chapter, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility, as defined in subsection *(4)* of this section, that interferes with the operation of the health care facility or affects the care of patients in the health care facility."

Section 2. Section 39-32-103, MCA, is amended to read:

"39-32-103. Rules. The *board shall* adopt and promulgate rules to carry into effect the provisions of this chapter."

Section 3. Section 39-32-104, MCA, is amended to read:

"39-32-104. Hearings for determination of appropriate unit. The *board* may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2)."

Section 4. Section 39-32-105, MCA, is amended to read:

"39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The *board* may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the *board* may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition."

Section 5. Section 39-32-106, MCA, is amended to read:

"39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for

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purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the *board* and said *board*, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit."

Section 6. Section 39-32-109, MCA, is amended to read:

"**39-32-109. Unfair labor practices of health care facility.** It is an *unfair labor* practice for a health care facility to do one or more of the following:

(1) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(2) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(3) discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(4) refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing and have their representative sign any agreement arrived at through negotiations and discussion.

(5) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of such action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law."

Section 7. **Unfair labor practices of labor organization.** It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right to:

(a) form, join, or assist any labor organization;

(b) bargain collectively through representatives of their own choosing; or

(c) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(2) restrain or coerce an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(3) refuse to bargain collectively in good faith with an employer if it has been designated as the exclusive representative of employees;

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(4) use agency shop fees for contributions to political candidates or parties.

Section 8. **Adjudication of unfair labor practices complaints.** Violations of 39-32-109 or [section 7] are remediable by the board, and board orders are enforceable and reviewable by the court in the same manner as provided for in Title 39, chapter 31, part 4.

Section 9. **Representation questions decided by the board.** Representation questions shall be decided by the board in the same manner as provided for in 39-31-207 through 39-31-210.

Section 10. **Subpoena power.** The board has the same power to subpoena witnesses and administer oaths and affirmations under this chapter as it does under Title 39, chapter 31, and the provisions of 39-31-106 and 39-31-107 are incorporated by reference into this chapter.

Section 11. **Codification instruction.** Sections 7 through 10 are intended to be codified as an integral part of Title 39, chapter 32, and the provisions of Title 39, chapter 32, apply to sections 7 through 10.

Section 12. **Repealer.** Sections 39-32-107, 39-32-108, and 39-32-111, MCA, are repealed.

Approved April 14, 1983.

CHAPTER NO. 486

AN ACT TRANSFERRING THE RESPONSIBILITY FOR CONTROL OF STATE GOVERNMENT DATA PROCESSING FROM THE BUDGET DIRECTOR TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION; FURTHER DEFINING THE DEPARTMENT DIRECTOR'S RESPONSIBILITIES; CREATING A DATA PROCESSING ADVISORY COUNCIL; AMENDING SECTIONS 2-17-301 AND 18-4-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-301, MCA, is amended to read:

"2-17-301. Supervision of mailing, duplicating, copying, and telephone facilities. (1) The department of administration shall maintain and supervise any central mailing, messenger service, duplicating, and copying facilities for state agencies in the capitol area.

(2) The department shall maintain and supervise any central telephone switchboard for state agencies located in Helena.

(3) Cost records shall be maintained and agencies shall be billed for services received."

Section 2. Section 18-4-111, MCA, is amended to read:

"18-4-111. Responsibilities of director of department of administration for data processing. *(1) Except as provided in subsection (2), the* director *of the department* shall:

(a) establish *policies and a statewide plan, in cooperation with state agencies,* for the operation and development of data processing for state government;

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(b) review and approve *agency specifications and* procurement *methods for the acquisition* of data processing equipment, *excluding specifications and methods relating to instruction and research in the university system, to insure network compatibility and conformity with the statewide data processing plan;*

(c) review and approve all contracts for private sector data processing services *to insure conformance with the statewide data processing plan; and*

(d) operate and maintain a central computer center and a data processing equipment pool for the use of all state agencies and political subdivisions.

(2) The responsibilities of the director under this section do not apply to the office of the superintendent of public instruction, and that office is exempt from the requirements of this section."

Section 3. **State data processing advisory council.** (1) The department shall create a state data processing advisory council under 2-15-122.

(2) The members of the advisory council shall be selected from a diverse group in order to adequately represent the interests of state agencies, including the university system.

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 18, and the provisions of Title 18 apply to section 3.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1983.

CHAPTER NO. 487

AN ACT TO REVISE THE GROSS VEHICLE WEIGHT LAWS BY ALLOWING THE MAXIMUM GROSS WEIGHT TO BE DETERMINED USING THE STATUTORY FORMULA, BY ELIMINATING THE GROSS WEIGHT LIMITATIONS ON GROUPS OF AXLES, BY PROVIDING FOR CHANGING THE 7 PERCENT ALLOWANCE TO A 5 PERCENT ALLOWANCE ON TOTAL GROSS AND AXLE WEIGHT LIMITATIONS FOR ALL VEHICLES OR COMBINATIONS OF VEHICLES NOT TRANSPORTING LIVESTOCK, AND BY ESTABLISHING MAXIMUM LENGTH FOR TRAILERS AND SEMITRAILERS IN CERTAIN COMBINATIONS AND ALLOWING MAXIMUM LENGTH OF 75 FEET FOR OTHER COMBINATIONS WITHOUT SPECIAL PERMIT AND 95 FEET WITH SPECIAL PERMIT; CORRECTING AN ERRONEOUS REFERENCE; AMENDING SECTIONS 61-10-104, 61-10-107, 61-10-124, AND 61-10-144, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-104, MCA, is amended to read:

"61-10-104. Length. (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 40 feet.

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(2) *When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 48 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer combination, the semitrailer and trailer may not exceed 28 ½ feet each in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer and truck tractor-semitrailer-trailer combinations are not subject to an overall combination length limit. All other combinations of vehicles* may not have an overall length, inclusive of front and rear bumpers, in excess of *75* feet, *except as provided by 61-10-124.* If the combination consists of more than two units, the rear units of the combination shall be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than two motor vehicles attached to it by the dual saddle-mount method; that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of 65 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of 65 feet."

Section 2. Section 61-10-107, MCA, is amended to read:

"61-10-107. Maximum gross weight — when permit required. (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. For purposes of this section, axles 40 inches or less apart are considered as a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, *group of axles,* or combination *of vehicles* shall be determined by the formula W equals 500 (LN/N minus 1 plus 12N plus 36) in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, *except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more.*

(2) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the table in 61-10-105(3).

(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit, which may be issued in the discretion of the department of highways based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee shall be $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department,

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purchase permits to expire with their registration. Permits may specify highway routing.

(4) A special permit issued under subsection *(3)* for the transportation of agricultural products by farm vehicles from a harvesting combine or other harvesting machinery to the point of first unloading shall be for the full term of the harvest season of the agricultural product transported.

(5) This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 3. Section 61-10-124, MCA, is amended to read:

"61-10-124. Special permits — fee. (1) Except as provided in subsection (2)(b), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 shall be paid for all movements under special permits on the public highways under the jurisdiction of the department.

(2) (a) Except as provided in subsection (2)(b), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of *95* feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 13 ½ feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. *Special permits for vehicle combinations of more than two trailers are not permitted under this section. Special permits for vehicle combinations may specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.*

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit."

Section 4. Section 61-10-144, MCA, is amended to read:

"61-10-144. Violation of standards — tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-110.

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(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable *total gross* weight limitations by more than *5%, or 7% if the vehicle or combination of vehicles is transporting livestock, and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock.* In the event the vehicle or combination of vehicles is not in excess of the allowable *total gross or axle* weight limitations by more than *5%, or 7% if the vehicle or combination of vehicles is transporting livestock,* the department may issue a single trip permit for the fee of $10 for allowing said vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations *of total gross or axle weight limitations* in excess of *5%, or 7% if the vehicle or combination of vehicles is transporting livestock,* are subject to the fines provided in 61-10-145, and all loads in excess of *5% of the total gross or axle weight limitations, or 7% if the vehicle or combination of vehicles is transporting livestock,* must be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing.

(3) An operator of a vehicle or combination of vehicles subject to the provisions of 61-10-107(2) may move over a highway, except any highway which is part of the federal-aid interstate system, within a 50-mile radius of the harvested field to the point of first unloading, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% per axle but the maximum load per inch of tire width may not exceed 670 pounds. The vehicle or combination of vehicles may not exceed 40 miles per hour. No single trip permit as required in subsection (2) shall be applicable to such vehicle or combination of vehicles. When such vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed shall apply to that portion of the load above the legal limit."

Approved April 14, 1983.

CHAPTER NO. 488

AN ACT LIMITING THE DEFINITION OF "TRAVEL TRAILER" FOR PURPOSES OF THE FEE IN LIEU OF TAX TO TRAILERS 45 FEET OR LESS IN LENGTH AND 8 FEET OR LESS IN WIDTH AND NOT USED AS A PRINCIPAL RESIDENCE; AMENDING SECTIONS 15-1-101 AND 61-1-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-131, MCA, is amended to read:

"61-1-131. Travel trailer. "Travel trailer" as used in 61-3-521 and 61-3-523 means a trailer *45* feet or less in length and 8 feet or less in width

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originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use *and not used as a principal residence.*"

Section 2. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) When terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(e) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. If the mobile home or housetrailer is an improvement located on land not owned by the owner of such improvement, the improvement is assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement.

(f) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches", exceeding 8 feet in width or *45* feet in length, designed to be moved from one place to another by an independent power connected to them *or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.*

(g) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(h) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(i) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(j) The term "real estate" includes:

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(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and 15-23-801; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(k) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-140.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Approved April 14, 1983.

CHAPTER NO. 489

AN ACT TO GENERALLY REVISE HARD-ROCK MINING IMPACT LAWS; AMENDING SECTIONS 82-4-335, 90-6-305, 90-6-307, AND 90-6-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit. (1) No person shall engage in mining or disturb land in anticipation of mining in the state without first obtaining an operating permit from the board to do so. A separate operating permit shall be required for each mine complex. Prior to receiving an operating permit from the board, any person must pay the basic permit fee of $25 and must submit an application on a form provided by the board, which shall contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of mining;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and

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names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment; and

(g) a plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances.

(2) Except as provided in subsection (3), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 shall be conditioned to provide that *activities under the permit* may not commence until the hard-rock mining impact board approves the impact plan under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the impact plan approved by the hard-rock mining impact board, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons."

Section 2. Section 90-6-305, MCA, is amended to read:

"90-6-305. Hard-rock mining impact board — general powers. (1) The board may:

(a) retain professional staff, consultants, and advisors notwithstanding the provisions of 2-15-121;

(b) adopt rules governing its proceedings *and administration of this part*;

(c) award grants to local government units subject to 90-6-306;

(d) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

(e) make determinations as provided in 90-6-307; and

(f) accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board."

Section 3. Section 90-6-307, MCA, is amended to read:

"90-6-307. Impact plan to be submitted. (1) *After* an application for a permit *for a large-scale mineral development* is made under

82-4-335, the person seeking the permit shall submit to the affected counties and the board an impact plan describing the economic impact the large-scale mineral development will have on local government units and shall file proof of such submission to the counties with the board. *Whenever an environmental impact statement on the permit application is prepared under 75-1-201, the lead agency shall cooperate to the fullest extent practicable with the affected local government units to eliminate duplication of effort in data collection.* The governing bodies of the affected counties shall publish notice of the submission of an impact plan at least once in a newspaper of general circulation in the county. The impact plan shall include:

(a) a timetable for development, including the opening date of the development and the estimated closing date;

(b) the estimated number of persons coming into the impacted area as a result of the development;

(c) the increased capital and operating cost to local government units for providing services, including but not limited to police and fire protection, sewage, water treatment, schools, road construction and upkeep, education, and medical care, which can be expected as a result of the development;

(d) the financial or other assistance the developer will give to local government units to meet the increased need for services.

(2) In the impact plan, the developer shall commit itself to pay all of the increased capital and net operating cost to local government units that will be a result of the development, either from tax prepayments, as provided in 90-6-309, special industrial educational impact bonds, as provided in 90-6-310, or other funds obtained from the developer and shall provide a time schedule within which it will do so.

(3) Upon request of the governing body of an affected unit of local government, the mineral developer, prior to commencement of the 90-day review period, shall provide financial or other assistance as necessary to prepare for and evaluate the impact plan. The governing body of the affected county must contract with the developer to obtain the requested financial assistance for each unit of local government within the county. Any disbursements to a unit of local government under this subsection shall be credited against future tax liabilities, if any.

(4) An affected local government unit shall, within 90 days after receipt of the impact plan from the developer, notify the board in writing if that local government unit objects to the impact plan, specifying the reasons why the impact plan is objected to. *During the 90-day period, an affected local governmental unit may petition for one 30-day extension by submitting a written request to the board stating the need and justification for the extension. The board shall grant the extension unless it finds there is no reasonable basis for the request.* If no objection is received within the 90-day period *or any extension thereof*, the impact plan shall be approved by the board.

(5) If objections are received from a local government unit, the board shall, *within 10 days*, notify the developer and forward a copy of the local

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government unit's objections to the developer. If within 30 days the local government unit and the developer cannot resolve the objection, the board shall conduct a hearing on the validity of the objections which shall be held in the affected county or, if objections are received from local government units in more than one county, shall be held in the county which, in the board's judgment, is more greatly affected. The provisions of the Montana Administrative Procedure Act shall apply to the conduct of the hearing. The impact plan filed by the developer shall carry no presumption of correctness at the hearing.

(6) Following the hearing, the board shall, within 60 days, make findings as to those portions of the impact plan which were objected to and, if appropriate, amend the impact plan accordingly. The findings and impact plan, as amended, shall be served by the board upon all parties. Any local government unit or the developer, if aggrieved by the decision of the board, is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court in and for the judicial district in which the hearing was held.

(7) The developer shall, within 30 days of receipt of the approved impact plan, provide the board with a written guaranty that the developer will make all the payments to the board required in the approved impact plan and according to the time schedule contained in the approved impact plan.

(8) The board shall deposit all payments received from the developer into the hard-rock mining impact account established by 90-6-304.

(9) The board shall notify the department of state lands of its receipt of the written guaranty of payment, of each required payment, and of any failure of the developer to comply with this section.

(10) Upon receipt of evidence that an affected local government unit identified in the approved impact plan is providing or is preparing to provide an additional service or facility provided for in the approved impact plan, the board shall pay to that local government unit in one sum or in parts the money from the hard-rock mining impact fund identified in the plan as the increased cost to the local government unit of providing that public service or facility.

(11) If it is determined that an objection filed by an affected local government unit under subsection (3) is valid *and it results in some remedial order by the board or court of competent jurisdiction*, the local government unit shall be awarded and the developer shall pay reasonable costs and attorney fees associated with any *administrative or judicial* appeals filed under this section. Any attorney fees and costs awarded shall be in addition to any amounts paid by the developer under this part."

Section 4. Section 90-6-309, MCA, is amended to read:

"90-6-309. Tax prepayment — large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the *governing body* of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay

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property taxes in an amount equal to at least three times the estimated property tax due the year the large-scale mineral development facility commences operation. This prepayment shall exclude the 6-mill university levy and may exclude the mandatory county levy for the school foundation program of 40 mills.

(2) The person who is to prepay under this section shall not be obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, *through an appropriate financial institution,* as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for repayment according to the following procedure:

(a) In each year after the commencement of mining, the local government shall:

(i) divide its budget by the average mill levy of its jurisdiction during the 3 years immediately preceding commencement of mining operations, to arrive at a taxable valuation needed to fund its budget using the average 3-year mill levy;

(ii) reduce the taxable valuation of property of a person who prepaid property taxes by the excess, if any, of the total taxable value of the taxing jurisdiction including the person's property over the taxable value determined under subsection (5)(a)(i), but in no case by an amount greater than the taxable value of the person's property.

(b) The reduction in taxable value, if any, determined under subsection (5)(a)(ii) times the average mill levy used in subsection (5)(a)(i) equals the property tax prepayment credit allowed for the taxable year for that local government unit. Any local government unit not receiving a payment shall not be affected by this section and no reduction in value shall be used in the computation of taxes due that unit of local government. In no event shall the credit allowed under this part extend more than 10 years beyond the date the prepayment is made under this section.

(c) The procedure established under subsection (5)(a) shall continue from year to year until the total credit allowed the person who prepaid property taxes equals the total property taxes prepaid."

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Section 5. **Impact plan amendments.** (1) The impact plan may provide for amendment under definite conditions. Also, the governing body of an affected county or the mineral developer may petition the board for an amendment to an approved impact plan if:

(a) employment at the large-scale mineral development is forecast to increase or decrease by at least 100 people over or under the employment levels contemplated by the approved impact plan; or

(b) changes in the large-scale mineral development cause, or can be expected to cause, an increase in estimated population of at least 15% in a local government unit when measured against the average population of the local government unit in the 3-year period preceding the commencement of new construction or new operations of the mining facility; or

(c) it becomes apparent that an approved impact plan is materially inaccurate because of errors in assessment and 2 years have not elapsed since the date the facility begins commercial production; or

(d) the governing body of an affected county and the mineral developer join in a petition to amend the impact plan.

(2) Within 10 days of receipt the board shall publish notice of the petition at least once in a newspaper of general circulation in the affected county. The petition must include:

(a) an explanation of the need for an amendment;

(b) a statement of the facts and circumstances underlying the need for an amendment; and

(c) a description of the corrective measures proposed by the petitioner.

(3) Within 60 days after notice that the petition has been received, an affected local government unit or the mineral developer must notify the board in writing if such person objects to the amendments proposed by the petitioner, specifying the reasons why the impact plan should not be amended as proposed. If no objection is received within the 60-day period, the impact plan must be amended by the board as proposed by the petitioner.

(4) If an objection is received, within 10 days of its receipt, the board shall notify the petitioner and include a copy of all objections received by the board. If the objecting party and the petitioner cannot resolve the objections within 30 days after the expiration of the 60-day period, the board shall conduct a hearing on the validity of the objections within 30 days after the failure of the parties to resolve the objections. The hearing must be held in the affected county or, if objections are received from local government units in more than one county, must be held in the county which in the board's judgment is more greatly affected. The provisions of the Montana Administrative Procedure Act apply to the conduct of the hearing.

(5) Following the hearing, the board shall make findings as to those portions of the amendments which were objected to and, if appropriate, amend the impact plan accordingly. The board shall cause the findings

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and impact plan, as amended, to be served on all parties. Any local government unit or the developer is entitled to judicial review, as provided by Title 2, chapter 4, part 7, in the district court for the judicial district in which the hearing was held.

Section 6. **Codification instruction.** Section 5 is intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to section 5.

Approved April 14, 1983.

CHAPTER NO. 490

AN ACT GENERALLY REVISING THE LAWS CREATING THE STATE BOARD OF ARCHITECTS AND RELATING TO THE LICENSURE OF ARCHITECTS BY THE STATE; GRANTING THE BOARD THE AUTHORITY TO ADOPT RULES; AMENDING SECTIONS 37-65-102, 37-65-202, 37-65-301 THROUGH 37-65-303, 37-65-305, 37-65-321, AND 37-65-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-65-102, MCA, is amended to read:

"37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Practice of architecture" means *any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in such activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.*

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public."

Section 2. Section 37-65-202, MCA, is amended to read:

"37-65-202. Compensation of board members — expenses. Each member of the board is entitled to receive compensation *at the rate*

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provided in 37-1-133 *and the actual cost of mileage or other reasonable transportation costs, meals, and lodging when engaged in official board business.*"

Section 3. Section 37-65-301, MCA, is amended to read:

"**37-65-301. License required.** Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "*licensed* architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter."

Section 4. Section 37-65-302, MCA, is amended to read:

"**37-65-302. Licensure limited to individuals.** No firm, company, partnership, association, corporation, or other similar organization shall be *licensed* as an architect. Only individuals shall be *licensed* as architects, but a number of architects constituting a firm may use the collective title "architects" or "*licensed* architects"."

Section 5. Section 37-65-303, MCA, is amended to read:

"**37-65-303. Application — examination — issuance of license.** (1) A person wishing to practice architecture in this state shall apply to the department for a *license* to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination the department shall, if the candidate has been found qualified, grant a *license* to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached."

Section 6. Section 37-65-305, MCA, is amended to read:

"**37-65-305. Licensing of and solicitation of business by architects from other states.** *(1)* An architect holding a valid and current license to practice in another state, territory, or country *may* be granted a *license* to practice in Montana following presentation of a certificate issued by the national council of architectural registration boards and approved by the board. No arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) A nonresident architect who holds an unexpired license to practice architecture issued by the state in which his principal offices are located may, upon furnishing the board with such additional information or certification as it may require, offer architectural services in this state but

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may accept no commission or otherwise engage in the practice of architecture within this state until licensed by the board."

Section 7. Section 37-65-321, MCA, is amended to read:

"**37-65-321. Revocation or suspension of license — grounds — right to notice and hearing.** (1) The board may revoke *or suspend* a *license or take other appropriate disciplinary action* if *satisfactory* proof *is presented* to the board *that the licensee*:

(a) obtained *his license* through fraud or misrepresentation;

(b) has been found guilty of fraud or deceit in his professional practice or has been convicted of a felony *related to his professional practice of architecture;*

(c) *has committed acts* of gross incompetency or of recklessness in the planning or construction of buildings;

(d) has violated standards of professional conduct adopted by the board;

(e) has departed, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;

(f) except to the extent that the architect reasonably relied upon the advice of another professional in the field of building design and construction, has violated the building codes of this state or a political subdivision;

(g) has aided or *abetted* an unlicensed person to violate or evade this chapter; or

(h) has sealed or *signed* plans or specifications *or other professional work* not prepared under his direct supervision and control.

(2) A *license* may not be revoked *or suspended except under the contested case provisions of the Montana Administrative Procedure Act.*

(3) Charges of fraud, deceit, gross incompetence, negligence, or professional misconduct may be brought by any person against any licensee. Such charges shall be in writing, sworn to by the person making them, and filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, shall be set for hearing within 3 months of filing with the secretary."

Section 8. Section 37-65-322, MCA, is amended to read:

"**37-65-322. Penalty.** Any person who *uses* the title "architect" or "*licensed* architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than *$500* or more than *$1,000* or by imprisonment in the county jail for not less than 30 days or more than 6 months or by

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both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder."

Section 9. **Rulemaking.** The board of architects may adopt, amend, or repeal rules necessary for the implementation and enforcement of this chapter in accordance with the provisions of the Montana Administrative Procedure Act.

Section 10. **Codification instruction.** Section 9 is intended to be codified as an integral part of Title 37, chapter 65, and the provisions of section 9 apply to Title 37, chapter 65.

Approved April 14, 1983.

CHAPTER NO. 491

AN ACT TO ADD "REPAIR" AND "MAINTENANCE" TO THE DEFINITION OF "CONSTRUCTION"; TO EXEMPT REPAIR AND MAINTENANCE PROJECTS FROM THE REQUIREMENT THAT THE BOARD OF EXAMINERS APPROVE PROJECTS OVER $25,000 AND THE REQUIREMENT THAT A PRIVATE ARCHITECT OR CONSULTING ENGINEER BE RETAINED FOR SUCH PROJECTS; AMENDING SECTIONS 18-2-101, 18-2-103, 18-2-111, AND 18-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, and 18-2-122:

(1) "building" includes:

(a) a building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) a building, facility, or structure at a state institution;

(c) a building, facility, or structure owned or to be owned by a state agency, including the department of highways;

(2) "building" does not include:

(a) a building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) a facility or structure used as a component part of a highway or water conservation project;

(3) "construction" includes the construction, alteration, *repair, maintenance,* and remodeling of a building, and the equipping and furnishing of

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a building during construction, alteration, *repair, maintenance,* and remodeling."

Section 2. Section 18-2-103, MCA, is amended to read:

"18-2-103. Supervision of construction of buildings. (1) For the construction of a building costing more than $25,000, the department of administration shall:

(a) review and approve all plans and working drawings prepared by architects;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) under the supervision and with the approval of the board of examiners, solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount;

(d) review and, with the consent of the board of examiners, approve all change orders;

(e) accept the building when completed according to approved plans and specifications.

(2) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(3) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department of administration is responsible for concurring in construction projects where the proposed cost is less than $25,000 but more than $5,000. Before any contract under this subsection is approved for construction, alteration, *repair, maintenance,* or improvement at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are less than $5,000.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction revolving account in the revolving fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) *through (3)* of this section."

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Section 3. Section 18-2-111, MCA, is amended to read:

"18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture; however, this policy shall not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105(6); or

(c) preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, *with the exception of repair or maintenance projects,* when the total cost of the construction will exceed $25,000."

Section 4. Section 18-2-112, MCA, is amended to read:

"18-2-112. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. Such appointment shall be subject to the approval of the state board of examiners. *The department need not appoint an architect or consulting engineer for repair or maintenance projects.*"

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1983.

CHAPTER NO. 492

AN ACT TO AMEND THE LAWS RELATING TO THE OFFICE HOURS AND FEES OF JUSTICES' COURTS AND TO THE COMMENCEMENT OF ACTIONS IN AND REMOVAL OF ACTIONS FROM JUSTICES' COURTS; AMENDING SECTIONS 3-10-208, 25-31-112, 25-35-601, AND 25-35-605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-208, MCA, is amended to read:

"3-10-208. Office hours. In the resolution providing for the salary, the county commissioners shall designate the office hours for each *justice's court.* Office hours shall be commensurate with the salary provided."

Section 2. Section 25-31-112, MCA, is amended to read:

"25-31-112. Fees. The following is the schedule of fees which, except as provided in 25-35-605, shall be paid in every civil action in a justice's court:

(1) *$7.50* when complaint is filed, to be paid by the plaintiff;

(2) *$7.50* when the defendant appears, to be paid by the defendant;

(3) *$7.50* to be paid by the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the *$7.50* for the filing of the complaint shall be made for any services, including issuing and return of execution.

(4) *$7.50* for all services in an action where judgment is rendered by confession;

(5) *$7.50* for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate;

(6) $1 for issuing each writ of execution or attachment."

Section 3. Section 25-35-601, MCA, is amended to read:

"25-35-601. Commencement of action — assistance to claimant. (1) A small claims action is commenced whenever any person appears before a justice of the peace *or his clerk* and executes a sworn small claims complaint in substantially the same form as set forth in 25-35-602.

(2) The justice shall assist any claimant in preparing his complaint or instruct his clerk to provide such assistance. The attorney general shall prepare a pamphlet explaining in plain language the procedures for prosecuting and defending a claim in small claims court and distribute copies of the pamphlet to each small claims court. The justice or his clerk shall give the plaintiff a copy when the plaintiff appears to execute his complaint, and a copy must be attached to the order of the court/notice to defendant."

Section 4. Section 25-35-605, MCA, is amended to read:

"25-35-605. Removal to justice's court — effect of failure to remove. (1) Any action commenced in small claims court may be removed to justice's court by a defendant upon the filing of a notice of removal with the justice within *10* days of the service of the complaint and order. From the time of filing of the notice of removal, the court to which the action is removed has and exercises the same jurisdiction over it as though the action had been originally commenced in such court.

(2) Upon the filing of a notice of removal, the court shall give notice of that fact to all other parties to the action. All rules and statutes governing proceedings originally commenced in justice's court, *except rules of pleading but* including rules and statutes governing appeals from justice's court, are applicable to proceedings removed to justice's court, except that a plaintiff is not required to replead unless the court so orders, and no fee shall be required of a plaintiff for the filing of a complaint if a fee for filing was paid in small claims court.

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(3) Failure to request removal within the time provided in subsection (1) constitutes a waiver by the defendant of his right to a trial by jury and representation by an attorney, and the justice shall inform the defendant of such fact prior to commencement of the hearing."

Approved April 14, 1983.

CHAPTER NO. 493

AN ACT TO PROVIDE A WEIGHTED VOTING PROCESS IN THE SELECTION OF A PERSON TO FILL A LEGISLATIVE VACANCY IN THOSE LEGISLATIVE DISTRICTS CONSISTING OF ALL OR PARTS OF MORE THAN ONE COUNTY; AMENDING SECTION 5-2-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-402, MCA, is amended to read:

"5-2-402. Appointment by board of county commissioners. (1) When a vacancy occurs in the legislature, the vacancy shall be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board.

(2) Whenever boards of county commissioners sit as one appointing board, selection of an individual to fill the vacancy must be as follows:

(a) The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature, and he shall act as the presiding officer of the meeting.

(b) Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where A is the total votes cast in the respective county for the person vacating the legislative seat or, if such person was not himself elected, the votes cast for the last person to be elected for the current term, B is the total votes cast for that person in the legislative district, and C is the number of authorized commissioners on the board of the commissioner whose vote is being determined. If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula must be applied using the votes cast for the senatorial candidates at the last election in which such votes were cast. Such votes shall include only those cast by electors residing in the new senate district for senate candidates of the party to which the person vacating the seat belonged. The secretary of state shall provide an estimate of the number of votes so cast, by county or portion thereof.

(c) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation required by this subsection. If no candidate receives a number higher than 50 from

that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers.

(3) The appointment of a legislator under this section must take place within 15 days after the vacancy occurs."

Approved April 14, 1983.

CHAPTER NO. 494

AN ACT TO GENERALLY REVISE THE LAWS CONCERNING THE ISSUANCE AND TERMINATION OF FISH AND GAME LICENSES; AMENDING SECTIONS 87-2-102, 87-2-104, 87-2-106, 87-2-111, AND 87-2-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-102, MCA, is amended to read:

"87-2-102. Resident defined. In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions shall apply:

(1) Members of the armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States who are assigned to duty in Montana and *their dependents who reside in their Montana household with them,* after a period of 30 days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this chapter. The 30-day residence requirement is waived in time of war.

(2) Any person who has been a resident of the state of Montana, as defined in 1-1-215, for a period of 6 months immediately prior to making application for said license shall be eligible to receive a resident hunting, fishing, or trapping license.

(3) Any enrollee of a job corps camp located within the state of Montana shall, after a period of 30 days within Montana, be considered a resident for the purpose of making application for a fishing license as long as he remains an enrollee in a Montana camp."

Section 2. Section 87-2-104, MCA, is amended to read:

"87-2-104. Number of licenses allowed — fees. *(1) Except as authorized by the commission and except for class B-4 licenses, only* one license of any one class shall be issued to any one person. The department may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen, or destroyed upon payment of the original price of the lost, stolen, or destroyed license, not to exceed $5.

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(2) Except for Class A-4 licenses, the fee for additional licenses of any class issued as authorized by the commission is one-half the regular fee provided by law.

(3) The fee for additional Class A-4 licenses issued as authorized by the commission is the regular fee provided by law."

Section 3. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license. (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data, or descriptions as may be required by the department. *Except as provided in subsection (2), the* statements made by the applicant shall be subscribed to before the officer or agent issuing the license.

(2) Department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(4) It is unlawful to subscribe to any *statement, on any* application *or license, that is materially* false. Any material false statement contained in an application renders *the* license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor."

Section 4. Section 87-2-111, MCA, is amended to read:

"87-2-111. Termination of license. Such licenses shall be void after *the last day of February* next succeeding their issuance."

Section 5. Section 87-2-202, MCA, is amended to read:

"87-2-202. Application — stamp attachment — fee — expiration. (1) A wildlife conservation license shall be sold upon written application. The application shall contain the applicant's name, age, occupation, place of residence, post-office address, and length of time in the state of Montana; state whether the applicant is a citizen of the United States or an alien; and be subscribed by the applicant. The applicant shall present a driver's license or other identification to substantiate the information.

(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such rules as the department may prescribe.

(3) Resident and nonresident wildlife conservation licenses may be purchased for a fee of $2.

(4) Licenses issued shall be void after *the last day of February* next succeeding their issuance."

Approved April 14, 1983.

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CHAPTER NO. 495

AN ACT TO PROHIBIT DESTRUCTION, DISTURBANCE, OR REMOVAL OF TRAPS OR REMOVAL OF WILDLIFE FROM TRAPS BELONGING TO ANOTHER.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Unlawful to destroy, disturb, or remove traps or wildlife from traps belonging to another — exception.** (1) No person may destroy, disturb, or remove any trap or snare belonging to another person or remove wildlife from a trap or snare belonging to another person without permission of the owner of the trap or snare, except that from March 1 to October 1 of each year a person may remove any snare from land owned or leased by him if such snare would endanger livestock.

(2) This section does not apply to a law enforcement officer acting within the scope of his duty.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 87, chapter 3, part 5, and the provisions of Title 87, chapter 3, part 5, apply to section 1.

Approved April 14, 1983.

CHAPTER NO. 496

AN ACT TO PROVIDE A LIEN FOR MEDICAL PRACTITIONERS AND HOSPITALS AGAINST PAYMENTS AWARDED BY THE WORKERS' COMPENSATION DIVISION FOR MEDICAL SERVICES; AMENDING SECTIONS 39-71-743, 71-3-1112, AND 71-3-1118, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1118, MCA, is amended to read:

"**71-3-1118. Applicability.** (1) *Except as provided in subsection (2), this* part does not apply to compensation awarded *to workers for injury, disease, or death* pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan."

Section 2. Section 71-3-1112, MCA, is amended to read:

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"**71-3-1112. Purpose.** The purpose of this part is to establish lien rights for physicians, nurses, and hospitals when a person receiving medical treatment:

(1) is injured through the fault or neglect of another; or

(2) is *either* insured *or a beneficiary under insurance.*"

Section 3. Section 39-71-743, MCA, is amended to read:

"**39-71-743. Assignment or attachment of payments.** *(1)* No payments under this chapter shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts, *except as provided in 71-3-1118.*

(2) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. No fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Approved April 14, 1983.

CHAPTER NO. 497

AN ACT TO GIVE THE MONTANA INSURANCE DEPARTMENT JURISDICTION TO DETERMINE JURISDICTION OVER PROVIDERS OF HEALTH CARE BENEFITS; TO INDICATE HOW EACH PROVIDER OF HEALTH CARE BENEFITS MAY SHOW UNDER WHAT JURISDICTION IT FALLS; TO ALLOW FOR EXAMINATIONS BY THE STATE IF THE PROVIDER OF HEALTH CARE BENEFITS IS UNABLE TO SHOW IT IS SUBJECT TO ANOTHER JURISDICTION; TO MAKE SUCH A PROVIDER SUBJECT TO THE MONTANA INSURANCE CODE IF IT CANNOT SHOW THAT IT IS SUBJECT TO ANOTHER JURISDICTION; AND TO REQUIRE DISCLOSURE TO PURCHASERS OF SUCH HEALTH CARE BENEFITS CONCERNING WHETHER OR NOT THE PLANS ARE FULLY INSURED.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Jurisdiction to Determine Jurisdiction of Providers of Health Care Benefits Act".

Section 2. **Authority and jurisdiction of insurance department.** Notwithstanding any other provision of law and except as provided in [this act], any person or other entity that provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, is presumed to be subject to the jurisdiction of the department unless the

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person or other entity shows that while providing such services it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government.

Section 3. **How to show jurisdiction.** A person or entity may show that it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government by providing the commissioner with the appropriate certificate, license, or other document issued by the other governmental agency that permits or qualifies it to provide those services.

Section 4. **Examination.** A person or entity which is unable to show under [section 3] that it is subject to the jurisdiction of another agency of this or another state or a subdivision thereof or the federal government must submit to an examination by the commissioner to determine the organization and solvency of the person or entity and to determine whether or not such person or entity complies with the applicable provisions of this code.

Section 5. **Subject to state laws.** A person or entity unable to show that it is subject to the jurisdiction of another agency of this or another state or any subdivision thereof or the federal government is subject to all appropriate provisions of this code regarding the conduct of its business.

Section 6. **Disclosure.** (1) A production agency or administrator that advertises, sells, transacts, or administers the coverage in this state described in [section 2] and that is required to submit to an examination by the insurance commissioner under [section 4] shall, if such coverage is not fully insured or otherwise fully covered by an admitted life or disability insurer or nonprofit health service corporation, advise every purchaser, prospective purchaser, and covered person of such lack of insurance or other coverage.

(2) An administrator that advertises or administers the coverage in this state described in [section 2] and is required to submit to an examination by the commissioner under [section 4] shall advise any production agency of the elements of the coverage, including the amount of "stop-loss" insurance in effect.

Section 7. **Codification instruction.** This act is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to this act.

Approved April 14, 1983.

CHAPTER NO. 498

AN ACT TO GENERALLY REVISE THE MONTANA INSURANCE CODE STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE; AMENDING SECTIONS 33-20-202 THROUGH 33-20-204, 33-20-206, 33-20-207, 33-20-211, AND 33-20-212, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-20-202, MCA, is amended to read:

"33-20-202. Nonforfeiture provisions. (1) In the case of policies issued on or after the operative date of this part as defined in 33-20-213,

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no policy of life insurance, except as set forth in 33-20-212, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder *as are the minimum requirements specified in this section and are essentially in compliance with [section 9]*:

(a) that in the event of default in any premium payment after premiums have been paid for at least 1 full year, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date of such *amount* as may be specified in this part. *In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than 60 days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.*

(b) that upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years in the case of ordinary insurance and 5 full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified in this part;

(c) that a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default;

(d) that if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be specified in this part;

(e) *for a policy that has on a basis guaranteed in the policy unscheduled changes in benefits or premiums or that provides an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. For each other policy* a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary, either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

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(f) a statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of this state;

(g) an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy;

(h) if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and

(i) a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

(2) Any of the provisions or portions thereof set forth in subsections (a) through (i) which are not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of 6 months after demand therefor with surrender of the policy."

Section 2. Section 33-20-203, MCA, is amended to read:

"33-20-203. Cash surrender value — paid-up nonforfeiture benefit — life. (1) *Except as provided in subsection (2), any* cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by 33-20-202, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) the then present value of the adjusted premiums as defined in *[*33-20-204 through 33-20-207 *and section 6]*, corresponding to premiums which would have fallen due on and after such anniversary; and

(b) the amount of any indebtedness to the insurer on account of or secured by the policy.

(2) For any policy issued on or after the operative date of [section 6] that provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in subsection (1) for a policy that provides only the benefits otherwise provided by such rider or supplemental policy provision.

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(3) Any cash surrender value available within 30 days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefits, whether or not required by 33-20-202, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on account of or secured by the policy.

(4) Any paid-up nonforfeiture benefit available under the policy in the event of default in the premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this part in the absence of the conditions that premiums shall have been paid for at least a specified period.

(5) For any family policy issued on or after the operative date of [section 6] that defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse reaches 71 years of age, the cash surrender value referred to in subsection (1) is an amount not less than the sum of the cash surrender value as defined in subsection (1) for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in subsection (1) for a policy that provides only the benefits otherwise provided by such term insurance on the life of the spouse."

Section 3. Section 33-20-204, MCA, is amended to read:

"33-20-204. Adjusted premium. *(1) This section does not apply to policies issued on or after the operative date of [section 6].*

(2) (a) Except as provided in subsection *(3)*, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 2% of the amount of the insurance if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with the duration of the policy;

(iii) 40% of the adjusted premium for the first policy year;

(iv) 25% of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

(b) In applying the percentages specified in subsections (iii) and (iv) above, no adjusted premiums shall be deemed to exceed 4% of the amount of insurance or uniform amount equivalent thereto.

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(c) Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of inception of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy. The date of issue of a policy for the purposes of this subsection shall be the date as of which the rated age of the insured is determined.

(d) (i) In the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of the preceding subsections (a) and (b) shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

(ii) In the case of a policy for a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

(3) (a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance.

(b) The foregoing items (a)(i) and (a)(ii) being calculated separately and as specified in subsection *(2)* except that, for the purposes of (ii), (iii), and (iv) of subsection *(2)*, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (a)(ii) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a)(i) of this subsection."

Section 4. Section 33-20-206, MCA, is amended to read:

"33-20-206. Mortality tables — policies issued after operative date. *(1) This section does not apply to ordinary policies issued on or after the operative date of [section 6].*

(2) In the case of ordinary policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of the commissioner's 1958 standard ordinary mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that:

(a) such rate of interest shall not exceed 3 ½% per annum, except that a rate of interest not exceeding 4% per annum may be used for policies

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issued on or after March 17, 1973, and prior to July 1, 1979, and a rate of interest not exceeding 5 ½ % a year may be used for policies issued on or after July 1, 1979;

(b) for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 6 years younger than the actual age of the insured;

(c) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 extended term insurance table;

(d) for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

(3) After July 1, 1961, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the ordinary policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1966."

Section 5. Section 33-20-207, MCA, is amended to read:

"33-20-207. Industrial policies — mortality tables. *(1) This section does not apply to industrial policies issued on or after the operative date of [section 6].*

(2) In the case of industrial policies issued on or after the operative date of this section as defined herein, all adjusted premiums and present values referred to in this part shall be calculated on the basis of commissioner's 1961 standard industrial mortality table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that:

(a) such rate of interest shall not exceed 3 ½ % per annum except that a rate of interest not exceeding 4% per annum may be used for policies issued on or after March 17, 1973, and prior to July 1, 1979, and a rate of interest not exceeding 5 ½ % a year may be used for policies issued on or after July 1, 1979;

(b) in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1961 industrial extended term insurance table;

(c) for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

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(3) After February 22, 1965, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this section for such insurer), this section shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1968."

Section 6. **Mortality tables — interest rate adjusted premiums.** (1) (a) This section applies to all policies issued on or after the operative date of this section. Except as provided in subsection (7), the adjusted premiums for any policy are calculated on an annual basis and must be such a uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums is equal to the sum of:

(i) the then present value of the future guaranteed benefits provided for by the policy;

(ii) 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(iii) 125% of the nonforfeiture net level premium as provided in subsection (2). No nonforfeiture net level premium is considered to exceed 4% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years.

(b) The date of issue of a policy for the purpose of this subsection is the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium is equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(3) For policies that have on a basis guaranteed in the policy unscheduled changes in benefits or premiums or that provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values are initially calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values must be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

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(4) Except as otherwise provided in subsection (7), the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments, special hazards, and any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of:

(a) the sum of:

(i) the then present value of the then future guaranteed benefits provided for by the policy; and

(ii) the additional expense allowance, if any; over

(b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of:

(a) 1% of the excess, if positive, of the average amount of insurance at the beginning of each of the first 10 policy years subsequent to the change, over the average amount of insurance prior to the change at the beginning of each of the first 10 policy years subsequent to the time of the most recent previous change or, if there has been no previous change, the date of issue of the policy; and

(b) 125% of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium is equal to the result obtained by dividing the product of subsection (a) by the product of subsection (b):

(a) (i) the nonforfeiture net level premium applicable prior to the change multiplied by the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(ii) the present value of the increase in future guaranteed benefits provided for by the policy;

(b) the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this section for a policy issued on a substandard basis that provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance, adjusted premiums

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and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(8) Except as provided below, all adjusted premiums and present values referred to in [this section, section 7, and Title 33, chapter 20, part 2] are for policies of ordinary insurance calculated on the basis of the commissioner's 1980 standard ordinary mortality table or, at the election of the insurer for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors. All adjusted premiums and present values for policies of industrial insurance are calculated on the basis of the commissioner's 1961 standard industrial mortality table. All adjusted premiums and present values for all policies issued in a particular calendar year are calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as provided in this subsection for policies issued in that calendar year; with the following exceptions and conditions:

(a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as provided in this subsection for policies issued in the immediately preceding calendar year.

(b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by 33-20-202, is calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(c) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioner's 1961 industrial extended term insurance table for policies of industrial insurance.

(e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the tables set forth in subsection (8).

(f) Any ordinary mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1980 standard ordinary mortality table with or without 10-year select mortality factors or for the commissioner's 1980 extended term insurance table.

(g) Any industrial mortality tables adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum nonforfeiture standard

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may be substituted for the commissioner's 1961 standard industrial mortality table or the commissioner's 1961 industrial extended term insurance table.

(9) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year must be equal to 125% of the calendar year statutory valuation interest rate for such policy as defined in the standard valuation law, Title 33, chapter 2, part 5, rounded to the nearer ¼ of 1%.

(10) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form that involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any other provisions of that policy form.

(11) After October 1, 1983, any insurer may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date, before January 1, 1989, which is the operative date of this section for such insurer. If an insurer makes no such election, the operative date of this section for such insurer is January 1, 1989.

Section 7. **Determination of nonforfeiture values for special plans.** For a plan of life insurance that provides for future premium determination the amounts of which are to be determined by the insurer based on then estimates of future experience or for a plan of life insurance that is of such a nature that minimum values cannot be determined by the methods described in [33-20-204 through 33-20-207 and section 6]:

(1) the commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by [33-20-204 through 33-20-207 and section 6];

(2) the commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(3) the cash surrender values and paid-up nonforfeiture benefits provided by such plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this part, as determined by rules promulgated by the commissioner.

Section 8. Section 33-20-211, MCA, is amended to read:

"33-20-211. Calculation of values — other requisites. (1) Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary.

(2) All values referred to in *[*33-20-203 through 33-20-207 *and section 6]* may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death.

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(3) The net value of any paid-up additions, other than paid-up term additions, shall be not less than the *amounts* used to provide such additions.

(4) Notwithstanding the provisions of subsections (1) and *(3)* of 33-20-203, additional benefits payable under the following circumstances shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this part, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits:

(a) in the event of death or dismemberment by accident or accidental means;

(b) in the event of total and permanent disability;

(c) as reversionary annuity or deferred reversionary annuity benefits;

(d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this part would not apply;

(e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, is uniform in amount after the child's age is 1, and has not become paid up by reason of the death of a parent of the child; and

(f) as other policy benefits additional to life insurance and endowment benefits and premiums for all such additional benefits."

Section 9. **Additional rules for calculating cash surrender values.** (1) This section, in addition to all other applicable sections of this chapter, applies to all policies issued on or after January 1, 1987. Any cash surrender value available under the policy upon default in a premium payment due on any policy anniversary is an amount that does not differ by more than 2/10 of 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years subtracted from the sum of:

(a) the greater of zero and the basic cash value specified in subsection (2); and

(b) the present value of any existing paid-up additions less the amount of any indebtedness to the insurer under the policy.

(2) The basic cash value is equal to the present value, on such anniversary, of the future guaranteed benefits that would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the insurer, if there had been no default less the then present value of the nonforfeiture factors, as provided in subsection (3), corresponding to premiums that would have fallen due on and after such anniversary date. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in 33-20-203 or 33-20-204, whichever is applicable, are the same as the effects specified in 33-20-203 or 33-20-204, whichever is applicable, on the cash surrender values defined in that section.

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(3) The nonforfeiture factor for each policy year is an amount equal to a percentage of the adjusted premium for the policy year, as defined in 33-20-204 or [section 6], whichever is applicable. Except as is required by subsection (4), the percentage:

(a) must be the same percentage for each policy year between the second policy anniversary date and the later of the fifth policy anniversary date and the first policy anniversary date at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1% of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years; and

(b) must be such that no percentage after the later of the two policy anniversary dates specified in subsection (3)(a) applies to less than 5 consecutive policy years.

(4) No basic cash value may be less than the value that would be obtained if the adjusted premiums for the policy, as provided in 33-20-204 or [section 6], whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(5) Adjusted premiums and present values referred to in this section must, for a particular policy, be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this part. The cash surrender values referred to in this section include any endowment benefits provided for by the policy.

(6) A cash surrender value available other than upon default in a premium payment due on a policy anniversary date and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment are determined consistently with provisions specified for determining the analogous minimum amounts in 33-20-202 through 33-20-204, [section 6], and 33-20-211. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in 33-20-211(4) must conform with the principles of this section.

Section 10. Section 33-20-212, MCA, is amended to read:

"**33-20-212. Exceptions.** *(1)* This part *does* not apply to:

(a) reinsurance;

(b) group insurance;

(c) *a* pure endowment;

(d) *an* annuity or reversionary annuity contract;

(e) *a* term policy of uniform amount *that provides no guaranteed nonforfeiture or endowment benefits,* or renewal thereof, of *20* years or less expiring before age *71* for which uniform premiums are payable during the entire term of the policy;

(f) *a* term policy of decreasing amount *that provides no guaranteed nonforfeiture or endowment benefits,* on which each adjusted premium,

calculated as specified in *[*33-20-204 through 33-20-207 *and section 6]*, is less than the adjusted premiums so calculated on a *term* policy *of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits*, issued at the same age and for the same initial amount of insurance *and for a term of 20 years or less expiring before age 71, for which uniform premiums are payable during the entire term of the policy;*

(g) a policy which provides no guaranteed nonforfeiture or endowment benefits for which the cash surrender value, if any, or present value of any paid-up nonforfeiture benefit at the beginning of any policy year, calculated as specified in [33-20-203 through 33-20-207 and section 6], does not exceed 2.5% of the amount of insurance at the beginning of the same policy year;

(h) a policy that is delivered outside this state through an agent or other representative of the insurer issuing the policy.

(2) For purposes of subsection (1), the age at expiry for a joint term life insurance policy is the age at expiry of the oldest life."

Section 11. **Codification instruction.** Sections 6, 7, and 9 are intended to be codified as an integral part of Title 33, chapter 20, part 2, and the provisions of Title 33 apply to sections 6, 7, and 9.

Approved April 14, 1983.

CHAPTER NO. 499

AN ACT AUTHORIZING THE DEPARTMENT OF STATE LANDS TO WAIVE CIVIL PENALTIES FOR MINOR VIOLATIONS OF THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT AND REQUIRING THE BOARD OF LAND COMMISSIONERS TO ADOPT RULES TO IMPLEMENT WAIVER OF PENALTIES; AMENDING SECTION 82-4-254, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-254, MCA, is amended to read:

"**82-4-254. Violation — penalty — waiver.** (1) *Except as provided in subsection (2), a* person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than $100 or more than $5,000 for the violation and an additional civil penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing such violations as hereinafter provided in this section. Any person or operator who fails to correct a violation within the period permitted by law, rule of the board or department, or order of the commissioner shall

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be assessed a penalty of not less than $750 for each day during which such failure or violation continues. The period permitted for correction of a violation shall not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements.

(2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines such violation is not of potential harm to public health, public safety, or the environment or impairs the administration of this part. The board of land commissioners shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. The person or operator shall by filing a written request within 20 days of receipt of the notice of violation be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(4) The attorney general shall, upon request of the commissioner, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of the part;

(c) refuses to admit an authorized representative of the department to the permit area;

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

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(e) refuses to furnish any information or report requested by the department in furtherance of the provisions of this part;

(f) refuses to permit access to and copying of such records as the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection *(4)*(a) continues in effect until the completion or final termination of all proceedings for review of such under this part unless, prior thereto, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part, or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than $500 and not more than $10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall, upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(9) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall, upon conviction, be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 14, 1983.

CHAPTER NO. 500

AN ACT PROVIDING THAT THE OBLIGATION TO MAKE PAYMENTS TO ROYALTY OWNERS IS OF THE ESSENCE IN OIL AND GAS LEASES; REQUIRING OIL AND GAS PRODUCERS TO PAY INTEREST ON ANY UNPAID ROYALTIES; REQUIRING A ROYALTY OWNER TO BRING ANY ACTION SEEKING A REMEDY OR TO COLLECT PAYMENTS IN THE DISTRICT COURT OF THE COUNTY IN WHICH THE WELL IS LOCATED, AND PROVIDING FOR COURT COSTS AND ATTORNEY FEES IN ANY SUCH ACTION; AMENDING SECTION 82-10-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Obligation to pay royalties.** (1) The obligation arising under an oil and gas lease to pay oil or gas royalties to the royalty owner or his assignee, to deliver oil or gas to a purchaser to the credit of such

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royalty owner or his assignee, or to pay a portion of the proceeds of the sale of such oil or gas to the royalty owner or his assignee is of the essence in the lease contract.

(2) If the operator under an oil and gas lease fails to pay oil or gas royalties to the royalty owner or his assignee within 180 days after oil or gas produced under the lease is marketed, the unpaid royalties thereafter bear interest, at the maximum rate of interest authorized under 31-1-107 from the date due until paid. The operator may remit semiannually to a person entitled to royalties the aggregate of 6 months' royalties whenever the aggregate amount is less than $50.

(3) A royalty owner seeking a remedy for failure to make payments under the lease or seeking such payments under this section shall bring his action in the district court for the county in which the oil or gas well is located, and that court has jurisdiction over any such actions brought under this section. The prevailing party in any proceeding brought under this section is entitled to recover his court costs and reasonable attorney fees.

(4) This section does not apply if a royalty owner or his assignee has elected to take his proportionate share of production in kind or whenever there is a dispute as to the title of the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

Section 2. Section 82-10-102, MCA, is amended to read:

"**82-10-102. Remedy not exclusive.** The remedy provided for *in 82-10-101* is in the nature of a special remedy additional to and not a substitute for other remedies given by law to owners of royalties in lands of the character specified, and all acts or parts of acts in conflict with the provisions of *82-10-101* shall not apply in actions authorized and provided for by *that section.*"

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 82, chapter 10, part 1.

Approved April 14, 1983.

CHAPTER NO. 501

AN ACT ALLOWING THE HEAD OF A HOUSEHOLD TO CLAIM THE SAME STANDARD DEDUCTION AS MARRIED INDIVIDUALS FILING A JOINT RETURN; AMENDING SECTION 15-30-122, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-122, MCA, is amended to read:

"**15-30-122. Standard deduction.** (1) In the case of a resident individual, a standard deduction equal to 20% of adjusted gross income shall

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be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except *that* in the case of a single joint return of husband and wife *or in the case of a single individual who qualifies to file as a head of household on his federal income tax return,* the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

(2) By November 1 of each year, the department shall multiply the maximum standard deduction for single returns and joint returns by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted deductions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103."

Section 2. **Applicability.** This act applies to taxable years beginning after December 31, 1984.

Approved April 14, 1983.

CHAPTER NO. 502

AN ACT REQUIRING THE COUNTY GOVERNING BODY TO APPOINT A FIRE DISTRICT TRUSTEE WHEN THERE ARE NO NOMINEES FOR THE POSITION; AMENDING SECTION 7-33-2106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2106, MCA, is amended to read:

"7-33-2106. Details relating to board of trustees of fire district. (1) The five trustees initially appointed by the county commissioners shall hold office until their successors are elected *or appointed* and qualified as hereinafter provided.

(2) Trustees shall be elected as provided in subsection (3) of this section, 13-1-104(3), and 13-1-401 *or appointed as provided in subsection (4) of this section.* The term of office shall be 3 years beginning at the first district meeting following their election or *appointment and continuing* until their successors are elected *or appointed* and qualified. Appointments to fill vacancies shall be made by the county governing body and appointees shall hold office until the next regular election. All electors, as defined in Title 13, who reside in the district are eligible to vote in the election, including any holder of title to lands within the district who

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presents a proof of interest in such land at the polling place, regardless of whether he is registered to vote.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 30 days before the election day and signed by at least five electors of the district.

(4) If no nominations are made *for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices.*

(5) The trustees shall organize by choosing a chairman and appointing one member to act as secretary."

Approved April 14, 1983.

CHAPTER NO. 503

AN ACT AUTHORIZING UNDER CERTAIN CIRCUMSTANCES THE POSSESSION AND OPERATION OF CERTAIN ANTIQUE SLOT MACHINES; LIMITING THEIR OPERATION TO PRIVATE, RESIDENTIAL DWELLINGS; PROHIBITING THEIR POSSESSION, LOCATION, AND OPERATION IN ANY PUBLIC PREMISES BUT PERMITTING THEIR LOCATION FOR DISPLAY AND NOT FOR OPERATION IN A MUSEUM OWNED BY THE STATE, COUNTY, OR CITY; PROHIBITING THEIR OPERATION FOR ANY COMMERCIAL OR CHARITABLE PURPOSE; AMENDING SECTIONS 23-5-104 AND 23-5-121, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Possession and use of antique slot machines authorized — conditions.** (1) The provisions of 23-5-104 and 23-5-121 do not apply to antique slot machines possessed, located, and used in accordance with this section. For the purposes of this section an antique slot machine is a slot machine manufactured prior to 1950, the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means.

(2) Except as provided in subsection (3), antique slot machines may be possessed, located, and operated only in a private residential dwelling.

(3) Antique slot machines may be possessed or located for purposes of display only and not for operation in any public museum owned and operated by the state of Montana, or a county, or a city.

(4) No antique slot machine may be operated for any commercial or charitable purpose.

Section 2. Section 23-5-104, MCA, is amended to read:

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"23-5-104. Slot machines — possession unlawful. *Except as provided in [section 1], it* shall be a misdemeanor and punishable as hereinafter provided for any person to use, possess, operate, keep, or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind whatsoever."

Section 3. Section 23-5-121, MCA, is amended to read:

"23-5-121. Duty of peace officer to seize gambling implements and apparatus — exception. *(1)* It shall be the duty of every officer authorized to make arrests to seize every machine, apparatus, or instrument answering to the description contained in this part or which may be used for the carrying on or conducting of any game or games mentioned in this part and to arrest the person actually or apparently in possession or control thereof or of the premises in which the same may be found, if any such person be present at the time of the seizure, and to bring the machine, apparatus, or instrument and the prisoner, if there be one, before a committing magistrate.

(2) This section does not apply to antique slot machines, the possession, location, or use of which is authorized by [section 1]."

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 23, chapter 5, part 1, and the provisions of Title 23, chapter 5, apply to section 1.

Approved April 14, 1983.

CHAPTER NO. 504

AN ACT TO CLARIFY THE PROVISIONS RELATING TO HIGH SCHOOL TUITION; AMENDING SECTIONS 20-5-311 AND 20-5-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-311, MCA, is amended to read:

"20-5-311. High school tuition. (1) Any child may be enrolled in and attend a high school outside of the high school district in which he resides when such high school is located in Montana or in a county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent. *The trustees of the district of residence, the trustees of the district in which the child wishes to attend school, and the county superintendent are the approval agents for tuition to another high school within the county. The county superintendent of the county of residence*

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and the trustees of the district in which the child wishes to attend school are the approval agents for attendance outside the county.

(2) The *approval agents* shall approve a tuition application when a child lives closer to a high school of another district than any high school located within his resident district or when, due to road or geographic conditions, it is impractical to attend the high school nearest his residence. In approving such a tuition application the *approval agents* are not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana if the resident district provides transportation. In approving a tuition agreement under this provision, the *approval agents* may require the child to attend the high school closest to his residence. The *approval agents* may approve any other tuition application that satisfies the geographic requirements of this section.

(3) The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within 15 days after the receipt of the application.

(4) The county superintendent shall notify the parent or guardian and the trustees of the district where the child wishes to attend school of the tuition agreement approval or disapproval. If a tuition agreement is disapproved by *one or more approval agents*, the parent may appeal such disapproval to the *county superintendent* and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title.

(5) The approval of any tuition agreement by *all of* the *applicable* approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year."

Section 2. Section 20-5-312, MCA, is amended to read:

"20-5-312. Reporting, budgeting, and payment for high school tuition. (1) At the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the actual expenditures from the district general fund, *the* debt service fund, *and, if the pupil is a resident of another county, the retirement fund*;

(b) dividing the amount determined in subsection (1)(a) above by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(c) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (1)(b) above.

(2) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

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(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(3) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(4) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(5) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence shall be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of the high school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. The payment shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of 20-9-141.

(6) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. This levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments shall be made whenever there is a sufficient amount of cash available in the tuition

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fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school feel the transfer privilege provided by this subsection is being abused they may appeal to the county superintendent of schools who shall hold a hearing and either approve or disapprove the transfer."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1983.

CHAPTER NO. 505

AN ACT TO ESTABLISH A PROCEDURE BY WHICH AN INDIVIDUAL ALLEGING A VIOLATION OF THE HUMAN RIGHTS ACT MAY ELECT TO PURSUE A COMPLAINT BEFORE THE COMMISSION OR IN DISTRICT COURT AND BY WHICH A PERSON AGAINST WHOM A COMPLAINT WAS FILED MAY ELECT TO HAVE THE MATTER REMOVED TO DISTRICT COURT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Filing a complaint in district court.** (1) The commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505 and has determined that it will be unable to hold a contested case hearing within 12 months of the date the complaint was filed under 49-2-501; and

(b) 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation pursuant to 49-2-504 have been unsuccessful.

(2) Within 90 days after receipt of a letter issued by the commission pursuant to subsection (1), the complainant shall petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of a letter issued by the commission, the claim shall be barred.

(3) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 49, chapter 2, part 5, and the provisions of Title 49, chapter 2, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1983.

CHAPTER NO. 506

AN ACT TO CREATE A BOARD OF ATHLETICS RESPONSIBLE FOR PROTECTING THE PUBLIC FROM FRAUD IN BOXING AND WRESTLING EVENTS AND FOR ISSUING LICENSES TO PROMOTERS, REFEREES, AND OTHERS INVOLVED WITH THOSE EVENTS; REPEALING SECTION 7-21-4212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board of athletics.** (1) There is a board of athletics.

(2) The board consists of three members appointed by the governor with the consent of the senate.

(3) Each member shall serve for a term of 3 years, and no member shall serve for more than 4 consecutive terms.

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

Section 2. **Definitions.** Unless the context requires otherwise, in [sections 2 through 13], the following definitions apply:

(1) "Board" means the board of athletics provided for in [section 1].

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

Section 3. **Board organization — compensation — meetings — department to keep records.** (1) Before April 1 of each year the board shall meet to elect one of its number chairman and may elect such officers as it considers necessary. Two of the members of the board constitute a quorum to do business, and, except as provided in [section 6], the concurrence of at least two members is necessary to take board action.

(2) The members of the board are entitled to compensation and expenses as provided in 37-1-133.

(3) The department shall keep a record of the board's proceedings, which are public records subject to public inspection.

Section 4. **Enforcement of rules by board member — board designees.** (1) In absence of a quorum of the board, any board member

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in attendance at and supervising a contest or exhibition has the full power of the board in enforcing rules of the board.

(2) The board may designate in writing representatives to act specifically on behalf of the board but only within the scope of the written authority.

Section 5. **Board member conflict of interest.** No board member may:

(1) serve as a manager, promoter, or trainer of a professional or semiprofessional boxer or wrestler or an amateur boxer;

(2) have a financial interest or affiliation in a professional or semiprofessional boxing or wrestling match or an amateur boxing match;

(3) serve as ring official, timer, referee, or judge at a professional or semiprofessional boxing or wrestling match or an amateur boxing match; or

(4) participate in a professional or semiprofessional boxing or wrestling match or an amateur boxing match.

Section 6. **Board jurisdiction — license required — contestant participation.** (1) The board has sole management, control, and jurisdiction over each professional or semiprofessional wrestling or boxing match or exhibition involving a prize or purse and at which an admission fee is charged, either directly or indirectly, in the form of dues or otherwise, to be held within the state, except a match or exhibition conducted:

(a) by a university, college, or high school;

(b) by the military; or

(c) for contestants under 16 years of age, by a recognized amateur association.

(2) No organization or individual may conduct a match or exhibition within the board's jurisdiction unless it or he is the holder of an appropriate license granted by the board.

(3) No referee, manager, or judge may participate in a match or exhibition within the board's jurisdiction unless he is licensed by the board and the match or exhibition is conducted by an organization or individual licensed by the board.

(4) No professional or semiprofessional boxer or wrestler may participate in a match or exhibition within the board's jurisdiction unless he is licensed by the board and the match or exhibition is conducted by an organization or individual licensed by the board, and his right to participate has not been suspended under [section 12].

Section 7. **Rules.** (1) The board may adopt rules for the administration and enforcement of [sections 2 through 13].

(2) The rules must include but are not limited to the following:

(a) the granting, renewal, suspension, and revocation of licenses and the qualification requirements for those to be licensed to conduct matches

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or exhibitions or to be licensed as referees, managers, or judges. Such qualifications must include appropriate knowledge, experience, and integrity.

(b) the labeling of a match as a championship match;

(c) the number and length of rounds and the weight of gloves;

(d) the extent and timing of the physical examination of contestants; and

(e) the attendance of a referee and his powers and duties.

(3) The rules shall meet or exceed the safety codes required by recognized professional boxing and wrestling organizations and provide reasonable measures for the fair conduct of the matches or exhibitions and for the protection of the health and safety of the contestants. The rules shall require a physical examination of each contestant prior to each match or exhibition and the attendance of a licensed physician at ringside and shall provide for the qualifications of judges, referees, and seconds and for the payment of such officials by the promoter.

Section 8. **Licenses — fees.** (1) The board may issue an annual license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The board may issue annual licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

(3) Each application for an original license under this section or renewal of a license must be accompanied by a fee set by the board, commensurate with costs related to the particular license as provided in 37-1-134.

Section 9. **Bond — conditions.** (1) No license to conduct professional or semiprofessional matches or exhibitions may be issued unless the licensee has executed a bond in the sum of not less than $5,000.

(2) The bond must be conditioned on faithful compliance by the licensee with the provisions of [sections 2 through 13] and the rules of the board.

Section 10. **Report of ticket sales — tax on gross receipts — disposition of money received.** (1) An individual or organization licensed to conduct a boxing or wrestling match or exhibition must, within 24 hours after the completion of each match or exhibition, furnish to the department a written report, verified by one of its officers or owners, showing the number of tickets sold for the match or exhibition, the amount of gross proceeds, and other matters as the board prescribes and must also within 24 hours pay to the department a tax of 5% of its total gross receipts, after deducting the federal admission tax, if any, from the sale of tickets.

(2) All taxes and fees collected by the department or the board under [sections 2 through 13] must be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

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Section 11. **Examination of books and records on failure to make report or on unsatisfactory report — penalty for failure to pay tax.** (1) If an individual or organization fails to make a report of a contest at the time prescribed by [sections 2 through 13] or if the report is unsatisfactory to the board, the board may examine the books and records of the individual or organization and subpoena and examine witnesses under oath for the purpose of determining the total amount of its gross receipts for a contest and the amount of tax due under [sections 2 through 13].

(2) If the individual or organization remains in default in the payment of tax ascertained to be due for a period of 20 days after notice to such delinquent of the amount due, the delinquent forfeits its license and is disqualified from receiving a new license.

Section 12. **Discipline.** (1) A license issued under the provisions of [sections 2 through 13] may, after notice and opportunity for hearing, be revoked or suspended by the board for a violation of the provisions of [sections 2 through 13] or any rule of the board.

(2) The board may, after notice and opportunity for hearing, reprimand any professional or semiprofessional athlete or suspend, for a period not to exceed 1 year, his right to participate in any match or exhibition conducted by any licensee for:

(a) unsportsmanlike conduct while engaged in or arising directly from any match or exhibition;

(b) failure to compete in good faith or engaging in any sham match or exhibition; or

(c) the use of threatening or abusive language toward officials or spectators.

Section 13. **Violation as misdemeanor.** A person who violates a provision of [sections 2 through 13] is guilty of a misdemeanor and upon conviction is punishable as provided in 46-18-212.

Section 14. **Repealer.** Section 7-21-4212, MCA, is repealed.

Section 15. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1983.

CHAPTER NO. 507

AN ACT TO INCREASE FEES FOR THE SUPERVISION AND EXAMINATION OF BANKS; AMENDING SECTION 32-1-213, MCA; PROVIDING FOR RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-213, MCA, is amended to read:

"32-1-213. Payments to be made by banks, investment companies, and trust companies. *(1) On or before January 31 and July*

31 of each year, each bank, trust company, or investment company under the supervision of the department shall pay to the department a semiannual assessment fee. The fees shall be set to recover 80% of the costs of administering the program for the supervision of banks, trust companies, and investment companies. The department shall establish such assessment fee by rule on or before June 1 of each year. The funds so collected shall be deposited in the general fund.

(2) In addition to the above assessment, trust companies shall pay to the department an examination fee of $200 per day for each examiner involved in examining the trust assets under the control, safekeeping, or fiduciary responsibility of the trust company. Such fees shall be deposited by the department in the general fund."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 14, 1983.

CHAPTER NO. 508

AN ACT RELATING TO COUNTY CONTROL OF LITTERING AND DOGS; PROVIDING FOR COUNTY ORDINANCE POWER TO CONTROL LITTERING AND PROVIDE A PENALTY; AND PROVIDING FOR A PENALTY FOR VIOLATION OF A DOG CONTROL ORDINANCE; AMENDING SECTIONS 7-23-104 AND 7-23-2108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County control of litter.** (1) The governing body of a county may regulate, control, and prohibit littering on any county road and on land within the county by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107. The ordinance may apply to portions of the county and may apply to persons other than the owners of the property on which littering occurs.

(2) The governing body of a county may establish a fine not to exceed $200 as a penalty for violation of the ordinance referred to in subsection (1). A violation of the ordinance may not be punishable by imprisonment.

Section 2. Section 7-23-2108, MCA, is amended to read:

"7-23-2108. County control of dogs. (1) The governing body of the county *may* regulate, restrain, or prohibit the running at large of dogs by the adoption of an ordinance which substantially complies with the provisions of 7-5-103 through 7-5-107 and which may provide for the wearing of a license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps, or harbors the dog.

(2) Violation of an ordinance adopted under subsection (1) is a misdemeanor.

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(3) The county governing body is authorized to impound, sell, kill, or otherwise destroy dogs found at large contrary to ordinances.

(4) Nothing in this section restricts the governing body from enacting dog control measures in a portion of the county only."

Section 3. Section 7-23-104, MCA, is amended to read:

"7-23-104. Violations. Violation of any provision of this part shall constitute a misdemeanor."

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 14, 1983.

CHAPTER NO. 509

AN ACT REQUIRING A STATE AGENCY TO MAINTAIN A CENTRAL LIST OF ALL CONTRACTS TO BE LET BY THE AGENCY; AMENDING SECTION 18-8-105, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-8-105, MCA, is amended to read:

"18-8-105. Solicitation of bids. (1) In order to contract with a private consultant, a state agency shall establish a bid list in its central office. Any private consultant who desires to submit bids to that agency to provide consulting services may request in writing the agency place him on the agency's bid list.

(2) Whenever it is reasonably foreseeable that a proposed contract for private consultant services will exceed $5,000, the state agency shall notify all private consultants who have requested to be placed on the agency's bid list. The notice shall contain the following:

(a) a notice of invitation for offers of consulting services;

(b) the name and address of the person within the agency to be contacted by a private consultant wishing to make an offer;

(c) the closing date for receipt of offers of consulting services;

(d) the procedures and specifications upon which the agency will award the contract for consulting services; and

(e) any other information that the agency believes pertinent.

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(3) In addition to the notification required in subsection (2), the state agency, in its discretion, may solicit bids for consultant services by advertisement or other means.

(4) An agency need not follow the provisions of this section in bona fide emergency situations."

Approved April 14, 1983.

CHAPTER NO. 510

AN ACT DECLARING A TEMPORARY MORATORIUM ON THE EFFECTIVE DATE OF ADOPTION OR AMENDMENT OF RULES OF THE DEPARTMENT OF REVENUE GOVERNING THE ASSESSED VALUATION OF AGRICULTURAL LANDS.

WHEREAS, the Department of Revenue has recently proposed the repeal of its current administrative rules governing the assessed valuation of agricultural lands and has proposed new rules governing such assessed valuation; and

WHEREAS, the rules proposed by the Department will increase the assessed valuation of all agricultural lands and will increase the assessed valuation of some agricultural lands by more than 10 times; and

WHEREAS, the House Agriculture Committee and the Legislature as a whole seriously question the need for and wisdom of the proposed increases, particularly in times of severe economic hardship for farmers and ranchers.

THEREFORE, it is the intent of this bill to establish a temporary moratorium on the effective date of any rules proposed by the Department of Revenue in the area of assessed valuation of agricultural lands, in order that any such proposals may be more carefully reviewed by the Legislature.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Proposed rules not to be effective until January 1, 1986.** The rules governing the assessed valuation of agricultural lands proposed for adoption by the department of revenue in Montana Administrative Register Notice No. 42-2-209 and published at pages 58 through 64 of Issue No. 2 of the 1983 Montana Administrative Register and any rules substantially equivalent to those rules may not be made effective by the department of revenue until January 1, 1986.

Section 2. **Current rules to remain in effect.** Any repeal or substantial amendment of rules governing the assessed value of agricultural lands now published as ARM 42.20.141 through 42.20.146 may not take effect prior to January 1, 1986.

Approved April 14, 1983.

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CHAPTER NO. 511

AN ACT TO REVISE MONTANA'S PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION; TO REVISE THE ALTERNATE VALUATION FOR INHERITANCE AND ESTATE TAXES; TO REVISE THE STATUTES RELATING TO DEFERRED PAYMENT OF INHERITANCE AND ESTATE TAXES; AND TO REVISE THE APPORTIONMENT OF ESTATE AND INHERITANCE TAXES; AMENDING SECTIONS 72-2-101, 72-16-331 THROUGH 72-16-335, 72-16-337 THROUGH 72-16-339, 72-16-341, 72-16-342, 72-16-452, 72-16-456, 72-16-463, 72-16-464, 72-16-491, AND 72-16-603, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-2-101, MCA, is amended to read:

"72-2-101. Renunciation of succession. (1) A person or his personal representative or the representative of an incapacitated or protected person who is an heir, devisee, person succeeding to a renounced interest, *donee, appointee, grantee, recipient, or* beneficiary under a *trust or other nontestamentary instrument or under a power of appointment exercised by a testamentary or nontestamentary instrument, surviving joint owner or surviving joint tenant, or beneficiary or owner of an insurance contract or any incident of ownership therein* may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this section. The instrument shall:

(a) describe the property or interest renounced;

(b) be signed by the person renouncing; and

(c) declare the renunciation and the extent thereof.

(2) The court may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce, modify, amend, or otherwise deviate from any restriction on or power of administration, management, or allocation of benefit upon finding that such restriction on the exercise of the power may defeat or impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. Such authority shall be exercised, after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by the court.

(3) The instrument of renunciation must be received by the transferor of the interest, his legal representative, the personal representative of a deceased transferor, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates. To be effective for purposes of determining inheritance and estate taxes, the instrument must be received not later than the date which is 9 months after the later of the date on which the transfer creating the interest in a person is made or the date on which the

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person attains 18 years of age. If the circumstances that establish the right of a person to renounce an interest arise as a result of the death of an individual, the instrument must also be filed in the court of the county where proceedings concerning the decedent's estate are pending or where they would be pending if commenced. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the county clerk and recorder of the county in which the real estate is situated. No person entitled to a copy of the instrument is liable for any proper distribution or disposition made without actual notice of the renunciation, and no person making a proper distribution or disposition in reliance upon the renunciation is liable for any such distribution or disposition in the absence of actual notice that an action has been instituted contesting the validity of the renunciation.

(4) Unless the *transferor of the interest* has otherwise provided, the property or interest renounced devolves as though the person renouncing had predeceased the decedent or, if the appointment was exercised by a testamentary instrument, as though the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as though the person renouncing had predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power.

(5) (a) The right to renounce property or an interest therein is barred by:

(i) an assignment, conveyance, encumbrance, pledge, or transfer of property or interest, or a contract therefor;

(ii) a written waiver of the right to renounce;

(iii) an acceptance of the property or interest or benefit thereunder; or

(iv) a sale of the property or interest under judicial sale made before the renunciation is effected.

(b) The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(c) A renunciation or a written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

(7) Within 30 days of receipt of a written instrument of renunciation by the transferor of the interest, the renouncer, his legal representative, the personal representative of the decedent, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates, as the case may be, shall

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attempt to notify in writing those persons who are known or ascertainable with reasonable diligence who are recipients or potential recipients of the renounced interest of the renunciation and the interest or potential interest such recipient will receive as a result of the renunciation.

(8) Any interest in property which exists on July 1, 1983, may be renounced after October 1, 1983, as provided in this section. An interest that has arisen prior to July 1, 1983, in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section."

Section 2. Section 72-16-331, MCA, is amended to read:

"72-16-331. Definitions for alternate valuation purposes. As used in 72-16-331 through 72-16-342 *and [sections 17 through 23]*, the following definitions apply:

(1) "Active management" means the making of management decisions of a business, other than the daily operating decisions.

(2) "Adjusted value" means:

(a) in the case of a gross estate, the gross value of all transfers subject to the tax imposed by this part, determined without regard to 72-16-331 through 72-16-342 *and [sections 17 through 23]*, reduced by the amount of unpaid mortgages and indebtedness;

(b) in the case of real or personal property, the value of the property for the purposes of this part, determined without regard to 72-16-331 through 72-16-342 *and [sections 17 through 23]*, reduced by the amount of unpaid mortgages and indebtedness.

(3) "Agreement" means a written agreement signed by each person in being who has an interest, whether or not he is in possession, in any property designated in such agreement consenting to the application of 72-16-333 with respect to such property.

(4) "Department" means the department of revenue.

(5) "Disabled" means an individual who has a mental or physical impairment that renders him unable to materially participate in the operation of a farm or other business.

(6) "Eligible qualified heir" means a qualified heir who:

(a) is the surviving spouse of the decedent;

(b) has not attained 21 years of age;

(c) is disabled; or

(d) is a student.

(7) "Farm" means truck farms, ranches, nurseries, ranges, greenhouses, orchards, woodlands, or structures used primarily for raising agricultural or horticultural commodities. The term includes stock, dairy animals, poultry, fur-bearing animals, and fruit.

(8) "Farming purposes" means:

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(a) cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and managing of animals on a farm;

(b) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; or

(c) (i) planting, cultivating, caring for, or cutting trees; or

(ii) preparing, other than milling, trees for market.

(9) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(10) "Involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033 of the Internal Revenue Code.

(11) "Material participation" is determined in a manner similar to the manner used for the purposes of section 1402(a)(1) of the Internal Revenue Code.

(12) (a) "Member of the family" means, with respect to any individual, the individual's:

(i) ancestor;

(ii) spouse and the lineal descendants of the individual's spouse;

(iii) lineal descendant;

(iv) lineal descendants of the individual's parents.

(b) Member of the family also includes a spouse of:

(i) the individual's lineal descendants;

(ii) the lineal descendants of the individual's spouse; or

(iii) the lineal descendants of the individual's parents.

(c) For purposes of *this subsection (12)*, a legally adopted child of an individual is treated as a child of the individual by blood.

(13) "Net share rental" means the excess of:

(a) the value of the produce received by a lessor of land on which such produce is grown;

(b) divided by the cash operating expenses of growing such produce which, under the lease, are paid by the lessor.

(14) "Qualified exchange property" means real property that is to be used for the qualified use set forth in subsection (18).

(15) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired the property or to whom the property passed from the decedent. If a qualified heir disposes of any interest in

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qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(16) "Qualified real property" means real property located in this state that was acquired from or passed from the decedent to a qualified heir of the decedent and that on the date of the decedent's death was being used for a qualified use *by the decedent or a member of the decedent's family*, but only if:

(a) 50% or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property that:

(i) on the date of the decedent's death was being used for a qualified use *by the decedent or a member of the decedent's family*; and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent;

(b) 25% or more of the adjusted value of the gross estate consists of the adjusted value of real property that meets the requirements of (a)(ii) and (c) of this subsection;

(c) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which:

(i) the real property was owned by the decedent or a member of the decedent's family and used for a qualified use *by the decedent or a member of the decedent's family*; and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business;

(d) the real property is designated in the agreement referred to in subsection *(3)* of this section; *and*

(e) if an election is made with respect to qualified woodland, trees growing on such woodland may not be treated as a crop.

(17) (a) "Qualified replacement property" means:

(i) in the case of an involuntary conversion as described in section 1033(a)(1) of the Internal Revenue Code, any real property into which the real property is converted;

(ii) in the case of an involuntary conversion as described in section 1033(a)(2) of the Internal Revenue Code, any real property purchased by the qualified heir during the period specified in section 1033(a)(2)*(A)* of the Internal Revenue Code for the purpose of replacing the qualified real property.

(b) "Qualified replacement property" only includes property that is to be used for the qualified use set forth in (a) or (b) of subsection *(18)* of this section under which the qualified real property qualified under 72-16-333.

(18) (a) "Qualified use" means devotion of the property to any of the following:

(i) use as a farm for farming purposes; or

(ii) use in a trade or business other than the trade or business of farming.

(b) In the case of real property that meets the requirements of subsection *(16)*(c), residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(19) "Qualified woodland" means any real property that:

(a) is used in timber operations; and

(b) is an identifiable area of land, such as an acre or other area, for which records are normally maintained in conducting timber operations.

(20) "Student" means an individual as defined by section 151(e)(4) of the Internal Revenue Code.

(21) "Timber operations" means:

(a) the planting, cultivating, caring for, or cutting of trees; or

(b) the preparation, other than milling, of trees for market."

Section 3. Section 72-16-332, MCA, is amended to read:

"**72-16-332. Property acquired from decedent defined.** Property is considered to have been acquired from the decedent if the property:

(1) is so considered under section 1014(b) of the Internal Revenue Code;

(2) is acquired by any person from the estate; or

(3) is acquired by any person from a trust *to the extent the property is includable in the gross estate of the decedent.*"

Section 4. Section 72-16-333, MCA, is amended to read:

"**72-16-333. Alternate valuation of certain farm or business real property — limitation.** (1) If the decedent was at the time of his death a resident of this state and the personal representative elects to have 72-16-331 through 72-16-342 *and [sections 17 through 23]* apply and files an agreement with the department, the value of qualified real property for the purposes of the tax imposed by this part is its value for the use under which it qualifies under 72-16-331*(16)* as qualified real property.

(2) The aggregate decrease in the value of qualified real property taken into account for the purposes of the Montana inheritance tax that results from the application of (1) of this section may not exceed $500,000 *in the case of a decedent dying prior to October 1, 1983, and may not exceed $750,000 for decedents dying thereafter.*"

Section 5. Section 72-16-334, MCA, is amended to read:

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"72-16-334. Election of alternate valuation. An election for valuation under 72-16-331 through 72-16-342 *and [sections 17 through 23]* must be made within 18 months of the date of the decedent's death and must be made in such manner as the department may prescribe. *The election, once made, is irrevocable."*

Section 6. Section 72-16-335, MCA, is amended to read:

"72-16-335. Valuation of farms. (1) Except as provided in *(3)* of this section, the value of a farm for farming purposes is determined by dividing the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of the farm over the average annual state and local real estate taxes for comparable land by the average annual effective interest rate for all new federal land bank loans. For purposes of the preceding sentence, each average annual computation must be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(2) If there is no comparable land from which the annual average gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, when subsection (1) is applied, "average annual net share rental" must be substituted for "average annual gross cash rental".

(3) The formula in (1) *and (2)* of this section may not be used:

(a) if it is established that there is no comparable land from which the average annual gross cash rental may be determined *and that there is no comparable land from which the average net share rental may be determined*; or

(b) if the personal representative elects to have the value of the farm for farming purposes determined under 72-16-336."

Section 7. Section 72-16-337, MCA, is amended to read:

"72-16-337. Application to certain business interests — department rules. *(1)* The department shall prescribe regulations setting forth the application of 72-16-331 through 72-16-342 *and [sections 17 through 23]* in the case of an interest in a partnership, corporation, or trust that, with respect to the decedent, is an interest in a closely held business within the meaning of 72-16-453.

(2) For the purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs must be treated as a present interest."

Section 8. Section 72-16-338, MCA, is amended to read:

"72-16-338. Disposition or failure to use for qualified use — additional tax. (1) There is hereby imposed an additional inheritance tax if within *10* years after the decedent's death and before the death of the qualified heir:

(a) the qualified heir disposes of any interest in qualified real property other than by a disposition to a member of his family; or

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(b) the qualified heir ceases to use for the qualified use the qualified real property which was acquired or passed from the decedent.

(2) The amount of additional tax imposed by (1) of this section with respect to any interest is the amount equal to the lesser of:

(a) the adjusted tax difference attril utable to such interest; or

(b) the excess of the amount realized with respect to the interest or in any case other than a sale or exchange at arm's length, the fair market value of the interest over the value of the interest determined under 72-16-333.

(3) For the purposes of (2) of this section, the adjusted tax difference attributable to an interest is the amount that bears the same ratio to the adjusted tax difference with respect to the estate as determined under (4) of this section as the excess of the value of such interest for purposes of the Montana inheritance tax, determined without regard to 72-16-331 through 72-16-342 *and [sections 17 through 23]*, over the value of such interest determined under 72-16-333 bears to a similar excess determined for all qualified real property.

(4) For the purposes of (3) of this section, "adjusted tax difference with respect to the estate" means the excess of what would have been the tax liability but for 72-16-333 over the tax liability. For the purposes of this subsection, "tax liability" means the tax imposed by Title 72, chapter 16.

(5) For the purposes of this section, if the qualified heir disposes of a portion of the interest acquired by or passing to such heir or a predecessor qualified heir, or there is a cessation of use of such a portion, the value determined under 72-16-333 taken into account under (2)(b) of this section with respect to such portion shall be its pro rata share of the value of the interest and the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this section with respect to all prior transactions involving portions of the interest.

(6) In the case of an interest acquired from or passing from any decedent, if (a) or (b) of subsection (1) of this section applies to any portion of an interest, (b) or (a) of subsection (1) of this section, as the case may be, does not apply with respect to the same portion of the interest.

(7) The additional tax imposed by this section is due on the day that is 6 months after the date of the disposition or cessation.

(8) The qualified heir is personally liable for the additional tax with respect to his interest unless the heir has furnished bond that meets the requirements of 72-16-340."

Section 9. Section 72-16-339, MCA, is amended to read:

"72-16-339. When cessation of qualified use occurs. For the purposes of 72-16-338, real property ceases to be used for the qualified use if:

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(1) the property ceases to be used for the qualified use set forth in 72-16-331 under which the property qualified under 72-16-331; or

(2) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating *more than* 3 years during which:

(a) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business; and

(b) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business."

Section 10. Section 72-16-341, MCA, is amended to read:

"72-16-341. Involuntary conversion of qualified real property. (1) If there is an involuntary conversion of an interest in qualified real property, no tax is imposed by 72-16-338 on the conversion if the cost of the qualified replacement property equals or exceeds the amount realized on the conversion.

(2) If (1) of this section does not apply, the tax imposed by 72-16-338, with respect to any involuntary conversion, is the amount of tax that, but for this subsection, would have been imposed on the conversion reduced by an amount that bears the same ratio to such tax as the cost of the qualified replacement property bears to the amount realized on the conversion.

(3) (a) For the purposes of 72-16-338, any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property that was involuntarily converted, except that with respect to such qualified replacement property, the *10-year* period under 72-16-338 shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i) of the Internal Revenue Code, during which the qualified heir was allowed to replace the qualified real property.

(b) Any tax imposed by 72-16-338 on the involuntary conversion shall be treated as a tax imposed on a partial disposition. The provisions of 72-16-339 shall be applied by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property and by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(4) The rules of the last sentence of section 1033(a)(2)(B) of the Internal Revenue Code apply for the purposes of 72-16-331*(17)*(a)(ii)."

Section 11. Section 72-16-342, MCA, is amended to read:

"72-16-342. Time limitations on assessment of additional tax. (1) If qualified real property is disposed of or ceases to be used for a qualified use, the statutory period for the assessment of any additional tax under 72-16-338 attributable to disposition or cessation may not expire

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until 3 years after the date the department is notified, in a manner to be prescribed by the department, of the disposition or cessation *or, in the case of an involuntary conversion or exchange in which 72-16-341 or [section 22] applies, 3 years from the date the department is notified of the replacement of the converted property or of an intention to replace or exchange the property.*

(2) The additional tax may be assessed before the expiration of the 3-year period referred to in (1) of this section, notwithstanding the provisions of any other law or rule of law that would otherwise prevent such assessment."

Section 12. Section 72-16-452, MCA, is amended to read:

"72-16-452. Deferred payment for transfer of closely held business interest. (1) If the value of an interest in a closely held business that is taxable under Title 72, chapter 16, part 3, as a transfer from a decedent who was at the time of death a resident of this state exceeds *35%* of the adjusted gross estate, the personal representative may elect to pay all or part of the tax imposed by Title 72, chapter 16, part 3, in 2 or more but less than 11 equal installments.

(2) The maximum amount of tax that may be paid in installments by each beneficiary is an amount that bears the same ratio to the tax imposed by Title 72, chapter 16, part 3, as the closely held business amount passing to the beneficiary bears to the clear market value of all property passing to the beneficiary, without reduction for the federal estate tax due or paid.

(3) If an election is made under (1) of this section, the first installment must be paid on or before a date selected by the personal representative that is not more than 5 years after the date prescribed by 72-16-441 for the payment of tax without interest. If, however, a credit is claimed on the federal estate tax return for state death taxes on the estate under the provisions of section 2011(a) of the Internal Revenue Code, as amended, an amount of inheritance tax due equal to the federal credit must be paid within the period established in section 2011(c) of the Internal Revenue Code, as amended. Each succeeding installment must be paid on or before the date that is 1 year after the date of the preceding installment. The department may for reasonable cause extend the time for payment of any installment under this section, including any part of an additional tax prorated to any installment, for a reasonable period but not beyond the date that is 12 months after the due date for the last installment.

(4) If an election is made under (1) of this section, the tax due may not be further deferred under the provisions of 72-16-438."

Section 13. Section 72-16-456, MCA, is amended to read:

"72-16-456. Interests in more than one closely held business. (1) Interests in two or more closely held businesses, with respect to which there is taxable under Title 72, chapter 16, part 3, as a transfer from the decedent 20% *or more* of the total value of each business, shall be treated as an interest in a single closely held business.

(2) For the purposes of the 20% requirement of (1) of this section, an interest in a closely held business that represents the surviving spouse's

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interest in property held by the decedent and the surviving spouse as joint tenants or tenants in common shall be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent."

Section 14. Section 72-16-463, MCA, is amended to read:

"72-16-463. Failure to pay installment — acceleration of payment. *(1) Except as provided in subsection (2), if* any installment *of principal or interest* under 72-16-451 through 72-16-465 is not paid on or before the date fixed for its payment, including any extension of time for the payment of the installment, the unpaid portion of the tax payable in installments must be paid on notice and demand from the department.

(2) If any installment of principal or interest under 72-16-451 through 72-16-465 is not paid on or before the date determined under subsection (1) but is paid within 6 months of the date, the provisions of subsection (1) do not apply with respect to such payment, the provisions of 72-16-461 may not apply with respect to the determination of interest on such payment, and there is imposed a penalty in an amount equal to the product of 5% of the amount of such payment, multiplied by the number of months or fractions thereof after such date and before payment is made."

Section 15. Section 72-16-464, MCA, is amended to read:

"72-16-464. Acceleration of payment — other grounds. (1) The extension of time for payment of tax provided in 72-16-452 shall cease to apply and any unpaid portion of the tax payable must be paid upon notice and demand of the department if *any portion* of an interest in a closely held business that qualifies under 72-16-452 is distributed, sold, exchanged, or otherwise disposed of or *if* money and other property *attributable to such an interest is withdrawn* from the trade or business *and the aggregate of such distributions, sales, exchanges, or other dispositions and withdrawals equals or exceeds 50% of the value of such interest.*

(2) In the case of a distribution in redemption of stock to which section 303 of the Internal Revenue Code or so much of section 304 of the Internal Revenue Code as relates to section 303 applies:

(a) subsection (1) of this section does not apply with respect to the stock redeemed and, for the purposes of subsection (1), the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed; and

(b) subsection (1) of this section does not apply with respect to withdrawals of money and other property distributed and, for the purposes of subsection (1), the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed.

(3) Subsection (1) of this section does not apply to an exchange of stock pursuant to a plan of reorganization described in (D), (E), or (F) of section 368(a)(1) of the Internal Revenue Code or to an exchange to which section 355 of the Internal Revenue Code or so much of section 356 of the

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Internal Revenue Code applies to section 355, but any stock received in such an exchange shall be treated for purposes of subsection (1) as an interest qualifying under 72-16-452.

(4) Subsection (1) of this section does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, intestate succession, or a trust created by the decedent; *nor does it apply to a series of subsequent transfers of the property by reason of death of the transferor, so long as each transfer is to a member of the family within the meaning of section 267(c)(4) of the Internal Revenue Code.*"

Section 16. Section 72-16-603, MCA, is amended to read:

"**72-16-603. Tax — how apportioned.** (1) *Except as provided in subsection (3) and unless* the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose.

(2) If the decedent's will directs a method of apportionment of tax different from the method described in this part, the method described in the will controls.

(3) If the liabilities of persons interested in the estate as described in this part differ from those which result under the federal estate tax law, the liabilities imposed by the federal law control and the balance of this part applies as if the resulting liabilities had been prescribed in this part."

Section 17. **Special rules for surviving spouses.** (1) If property is qualified real property with respect to a decedent, hereinafter in this subsection referred to as the "first decedent", and the property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this section and 72-16-339 in the case of the estate of such surviving spouse, active management of a farm or other business by the surviving spouse must be treated as material participation by the surviving spouse in the operation of the farm or business.

(2) For the purposes of subsection (1), the determination of whether property is qualified real property with respect to the first decedent must be made without regard to whether an election under 72-16-334 was made.

Section 18. **Decedents who are retired or disabled.** (1) If on the date of the decedent's death, the requirements of 72-16-331(16)(c)(ii) with respect to the decedent for any property are not met and the decedent either was receiving old-age benefits under Title II of the Social Security Act for a continuous period ending on the date of death or was disabled for a continuous period ending on the date of death, then 72-16-331(16)(c) must be applied with respect to such property by substituting "the date on which the longer of the continuous periods described in [section 18(1)] began" for "the date of the decedent's death" in 72-16-331(16)(c).

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(2) For purposes of 72-16-339(2)(a), if the requirements of 72-16-331(16)(c)(ii) are met with respect to any decedent by reason of subsection (1), the period ending on the date on which the continuous period taken into account under subsection (1) began must be treated as the period immediately before the decedent's death.

Section 19. **Active management by eligible qualified heir treated as material participation.** (1) For purposes of 72-16-339, the active management of a farm or other business by an eligible qualified heir or a fiduciary of an eligible qualified heir must be treated as a material participation by the eligible qualified heir in the operation of the farm or business.

(2) In the case of an eligible qualified heir, subsection (1) applies only during periods during which the heir continues to be an eligible qualified heir.

Section 20. **No tax if use begins within two years.** If the date on which the qualified heir begins to use the qualified real property, hereinafter referred to as the commencement date, is before the date 2 years after the decedent's death:

(1) no tax may be imposed under 72-16-338 by reason of the failure by the qualified heir to so use such property before the commencement date; and

(2) the 10-year period under 72-16-338 must be extended by the period between the decedent's death and the commencement date.

Section 21. **Special rule for disposition of timber.** In the case of qualified woodland to which an election under 72-16-334 applies, if the qualified heir disposes of or severs any standing timber on the qualified woodland:

(1) the disposition or severance is treated as a disposition of a portion of the interest of the qualified heir in the property; and

(2) the additional tax imposed by 72-16-338 with respect to the disposition is an amount equal to the lesser of:

(a) the amount realized on the disposition or, in any case other than a sale or exchange at arm's length, the fair market value of the portion of the interest disposed or severed; or

(b) the amount of additional tax determined under this section, without regard to this subsection (2)(b), if the entire interest of the qualified heir in the qualified woodland had been disposed of, less the sum of the amount of the additional tax imposed with respect to all prior transactions involving the woodland to which subsection (2) applied.

(3) For purposes of subsection (2), the disposition of a right to sever is treated as the disposition of the standing timber. The amount of additional tax imposed under 72-16-338 in a case in which a qualified heir disposes of his entire interest in the qualified woodland must be reduced by any amount determined under this section with respect to such woodland.

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Section 22. **Exchanges of qualified real property.** (1) If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction that qualifies under section 1031 of the Internal Revenue Code, no tax may be imposed by 72-16-338 by reason of the exchange.

(2) If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction that qualifies under section 1031 of the Internal Revenue Code, the amount of the tax imposed by 72-16-338 by reason of the exchange must be the amount of tax that would have been imposed on the exchange under 72-16-338 without regard to this section, reduced by an amount which bears the same ratio to such tax as the fair market value of the other property bears to the fair market value of the qualified real property exchanged. Fair market value must be determined as of the time of the exchange.

(3) For purposes of 72-16-338:

(a) any interest in qualified exchange property must be treated in the same manner as if it were a portion of the interest in qualified real property that was exchanged;

(b) any tax imposed by 72-16-338 by reason of the exchange must be treated as a tax imposed on a partial disposition; and

(c) 72-16-338 must be applied by treating material participati with respect to the exchanged property as material participation with r ect to the qualified exchange property.

Section 23. **Treatment of replacement property acquired in transactions under section 1031 or 1033 of the Internal Revenue Code.** (1) Except as provided in subsection (2) in the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of his family must be treated as a period during which there was such ownership, use, or material participation with respect to the qualified replacement property.

(2) Subsection (1) does not apply to the extent that the fair market value of the qualified replacement property, as of the date of its acquisition, exceeds the fair market value of the replaced property, as of the date of its disposition.

(3) For purposes of this section:

(a) the term "qualified replacement property" means any real property:

(i) that is acquired in an exchange which qualifies under section 1031 of the Internal Revenue Code;

(ii) the acquisition of which results in the nonrecognition of gain under section 1033 of the Internal Revenue Code; or

(iii) that is used for the same qualified use as the replaced property was being used before the exchange;

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(b) the term "replaced property" means:

(i) the property transferred in the exchange that qualifies under section 1031 of the Internal Revenue Code; or

(ii) the property compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code.

Section 24. Section 72-16-491, MCA, is amended to read:

"72-16-491. Lien for additional tax attributable to farm and closely held business property. (1) In the case of any interest in qualified real property within the meaning of 72-16-331*(16)*, an amount equal to the adjusted tax difference attributable to such interest within the meaning of 72-16-338(3) is a lien in favor of the state on the property in which such interest exists.

(2) The lien imposed by this section shall arise at the time an election is filed under 72-16-333 and continues with respect to any interest in the qualified real property until:

(a) the liability for tax under 72-16-338 with respect to such interest has been satisfied or has become unenforceable by reason of lapse of time; or

(b) until it is established to the satisfaction of the department that no further tax liability may arise under 72-16-338 with respect to such interest.

(3) Sections 72-16-477, 72-16-479, and 72-16-480 apply with respect to a lien imposed by 72-16-491."

Section 25. **Codification instruction.** Sections 17 through 23 are intended to be codified as an integral part of Title 72, chapter 16, part 3, and the provisions of Title 72, chapter 16, part 3, apply to sections 17 through 23.

Section 26. **Applicability date.** This act applies to estates of persons dying after October 1, 1983.

Approved April 14, 1983.

CHAPTER NO. 512

AN ACT CLARIFYING WHICH DISTRICTS MUST BE USED TO ALLOCATE VOTERS TO CERTIFY A BALLOT ISSUE FOLLOWING A REAPPORTIONMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Ballot issue certification — allocating voters following reapportionment.** For the purpose of allocating the signatures of voters among the several legislative representative districts of the state

as required to certify a petition for a ballot issue under the provisions of Title 13, chapter 27, following the filing of a districting and apportionment plan under 5-1-111 and before members of the house of representatives have been elected and qualified under the plan, the legislative representative districts among which the signatures must be allocated must be those in existence when the plan was filed.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 14, 1983.

CHAPTER NO. 513

AN ACT ALLOWING ALL PUBLIC AND PRIVATE ALCOHOL PROGRAMS TO BE STATE-APPROVED; DENYING ELIGIBILITY FOR PUBLIC FUNDS TO PRIVATE ALCOHOLISM PROGRAMS ORGANIZED FOR PROFIT; AND ELIMINATING THE REQUIREMENT FOR INTERMEDIATE (HALFWAY HOUSE) CARE BEFORE THE PROVISION OF INPATIENT CARE; AMENDING SECTIONS 53-24-103, 53-24-108, 53-24-206, AND 53-24-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-24-103, MCA, is amended to read:

"53-24-103. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who has a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.

(2) "Approved private treatment facility" means a private agency (whose function is the treatment, rehabilitation, and prevention of alcoholism and drug dependence) meeting the standards prescribed in 53-24-208(1) and approved under 53-24-208.

(3) "Approved public treatment facility" means:

(a) a treatment agency operating under the direction and control of the department as a state agency and approved under 53-24-208; or

(b) a treatment agency operating under the direction and control of a local government and approved under 53-24-208.

(4) "Department" means the department of institutions provided for in 2-15-2301.

(5) "Family member" is the spouse, mother, father, child, or member of the household of an alcoholic whose life has been affected by the actions of the alcoholic and may require treatment.

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(6) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(7) "Incompetent person" means a person who has been adjudged incompetent by the district court.

(8) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(9) "Prevention" has meaning on four levels; these are:

(a) education to provide information to the school children and general public relating to alcohol dependence and alcoholism, treatment, and rehabilitative services and to reduce the consequences of life experiences acquired by contact with an alcoholic;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

(10) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to alcoholics, intoxicated persons, and family members."

Section 2. Section 53-24-108, MCA, is amended to read:

"53-24-108. Utilization of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 to state-approved *private nonprofit or public* programs whose function is the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved *private nonprofit or public* alcoholism programs and licensed hospitals for detoxification services; or

(b) as grants to state-approved *private nonprofit or public* alcoholism programs.

(2) State-approved private chemical programs organized for profit are not eligible for revenue generated by 16-1-404, 16-1-406, and 16-1-408.

(3) No person operating a state-approved alcoholism program may be required to provide matching funds as a condition of receiving a grant under subsection (1) of this section.

(4) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the

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donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(5) No person receiving funding under this section to support operation of a state-approved alcoholism program may refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(6) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess shall be reported to the grantor.

(c) The excess shall be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(7) Revenue generated by 16-1-404, 16-1-406, and 16-1-408 for the treatment, rehabilitation, and prevention of alcoholism which has not been encumbered for those purposes by the counties of Montana or the department shall be returned to the state's earmarked revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and will be distributed by the department the following year as provided in 53-24-206(3)(b)."

Section 3. Section 53-24-206, MCA, is amended to read:

"53-24-206. Administration of financial assistance. (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of alcoholism and drug dependence or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on alcoholism and drug dependence or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax or the beer license tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to

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approved *private nonprofit or public* programs on a discretionary basis shall be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds shall be distributed to the counties for use by approved *private nonprofit or public* programs in the following manner:

(i) Eighty-five percent shall be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent shall be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism."

Section 4. Section 53-24-209, MCA, is amended to read:

"**53-24-209. Rules for acceptance for treatment.** The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, intoxicated persons, and family members. In adopting the rules, the department shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient treatment unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each person.

(5) Provision shall be made for a continuum of coordinated treatment services so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1983.

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CHAPTER NO. 514

AN ACT ALLOWING WHOLESALE PETROLEUM DISTRIBUTORS TO BE INCLUDED UNDER THE DEFINITION OF "DISTRIBUTORS" IN THE BASIC GASOLINE LICENSE TAX LAW; PROVIDING FOR AN ANNUAL LICENSE FEE; AMENDING SECTIONS 15-70-201 AND 15-70-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-201, MCA, is amended to read:

"15-70-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as herein provided for.

(3) "Aviation gasoline" means gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

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(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) any dealer licensed as of January 1, 1969, except a dealer at an established airport.

(7) "Gasohol" means all products commonly or commercially known or sold as gasohol, produced and sold in Montana for the purpose of effectively and efficiently operating internal combustion engines, consisting of not less than 10% anhydrous ethanol produced in Montana from Montana agricultural products.

(8) "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301(6).

(9) "Import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from point of origin without this state other than in the fuel supply tank of a motor vehicle.

(10) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(11) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(12) "Use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision thereof."

Section 2. Section 15-70-202, MCA, is amended to read:

"15-70-202. License, fee, and security of gasoline distributors. (1) All gasoline distributors, prior to the commencement of doing business, shall file an application for a license with the department of revenue on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled.

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(2) Any person who engages in the wholesale distribtuion of gasoline in this state exercising the option under 15-70-201(6)(c) shall pay an annual license fee of $200 and upon renewal of the license shall pay an annual fee of $200.

(3) "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under such conditions as the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation."

Section 3. **Effective date.** This act is effective January 1, 1984.

Approved April 15, 1983.

CHAPTER NO. 515

AN ACT TO PROVIDE SCHOOL TRANSPORTATION REIMBURSEMENT RATE SCHEDULES BASED ON THE NUMBER OF ELIGIBLE TRANSPORTEES THAT BOARD A SCHOOL BUS ON AN APPROVED ROUTE; AMENDING SECTION 20-10-141, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-141, MCA, is amended to read:

"20-10-141. Schedule of maximum reimbursement by bus mileage rates. (1) The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school bus transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. Any vehicle, the operation of which is reimbursed under the rate provisions of this schedule, shall be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled shall be determined in accordance with the following schedule when the *number of eligible transportees that board a school bus on an approved route is not less than one-half of its rated capacity*:

(a) 60 cents in fiscal 1982 and 65 cents in fiscal 1983 and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than 50 children; and

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(b) when the rated capacity is more than 50 children, an additional 2 ½ cents per bus mile for each additional child in the rated capacity in excess of 50 shall be added to a base rate of 60 cents in fiscal 1982 and 65 cents in fiscal 1983 and each year thereafter per bus mile.

(3) When the number of eligible transportees boarding a school bus on an approved route is less than one-half of its rated capacity, the rate per bus mile traveled shall be computed as follows:

(a) determine the number of eligible transportees that board the school bus on the route;

(b) multiply the number determined in subsection (3)(a) by two and round off to the nearest whole number; and

(c) use the adjusted rated capacity determined in subsection (3)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2).

(4) The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of public education."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 15, 1983.

CHAPTER NO. 516

AN ACT ALLOWING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO OPERATE A PROGRAM OF HOME AND COMMUNITY-BASED MEDICAID SERVICES AS AN ALTERNATIVE TO LONG-TERM INSTITUTIONAL SERVICES; AUTHORIZING LONG-TERM CARE PLACEMENT EVALUATIONS OF PERSONS SEEKING OR RECEIVING LONG-TERM CARE SERVICES; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO DISSEMINATE INFORMATION ABOUT HOME AND COMMUNITY-BASED MEDICAID SERVICES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

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(2) "Department" means the department of social and rehabilitation services as provided for in Title 2, chapter 15, part 22.

(3) "Long-term care facilities" means facilities that are certified by the department of health and environmental sciences to provide skilled or intermediate nursing care services, including intermediate nursing care services for the developmentally disabled.

(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5) "Long-term care placement evaluation" means an evaluation that results in a determination as to whether a person requires the level of care provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities.

Section 2. **Department to operate a program of community-based long-term care medicaid services.** The department may operate, for persons eligible for medicaid, a program of community-based services as an alternative to long-term care facility services in accordance with the provisions of Title XIX of the Social Security Act, as that title reads on July 1, 1983, and 42 CFR, parts 435 and 441, as those parts read on July 1, 1983.

Section 3. **Long-term care placement evaluations authorized.** The department may conduct long-term care placement evaluations. Long-term care placement evaluations are required for all medicaid-eligible persons entering long-term care facilities and community-based services and for all persons who become eligible for medicaid after entering long-term care facilities, before payment for services in such settings are authorized under medicaid. Evaluations of persons not applying for medical assistance under [sections 1 through 5] must be on a voluntary basis.

Section 4. **Dissemination of information.** The department shall annually advise medical doctors and current residents of long-term care facilities of the program provided in [section 2].

Section 5. **Rules.** The department may adopt rules necessary to implement a program of community-based medicaid services and to establish a system of long-term care placement evaluations as part of that program.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** This act is effective July 1, 1983.

Approved April 15, 1983.

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CHAPTER NO. 517

AN ACT TO CLARIFY THE TIME LIMIT ON INTERACCOUNT LOANS; AMENDING SECTION 17-2-107, MCA; PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-107, MCA, is amended to read:

"17-2-107. (Effective July 1, 1983) Accurate accounting records and interaccount loans. (1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred and provided the loan is recorded in the state accounting records. *The loan must be repaid before the end of the fiscal year unless it is extended under the criteria of 17-2-107(3) or by specific legislative authorization.* No account shall be so impaired that all proper demands thereon cannot be met *even if the loan is extended.*

(3) No loan may be extended into the next fiscal year unless it is for the sole purpose of:

(a) repairing or replacing property damage covered by insurance; or

(b) payment of expenses which will later be reimbursed by:

(i) contractual receipts due from federal revenue;

(ii) receipts due to the auxiliary and restricted subfunds; or

(iii) receipts due to the loan fund.

(4) These loans may be extended into the next fiscal year if the department of administration receives sufficient written justification therefor from the borrower. A loan extended beyond the fiscal yearend must be repaid within 1 calendar year of the date the loan is approved. Under unusual circumstances the director of the department of administration may grant one extension of a loan for up to 1 year. The department of administration shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the

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house appropriations and senate finance and claims committees at the next legislative session.

(5) Any loan from the general fund or the university current unrestricted subfund to funds designated in subsections (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investment's short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings are credited to the state general fund.

(6) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)(a) through (1)(c) of 17-2-102.

(b) Units of the university system must maintain positive cash balances in the subfunds provided in subsections (1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102."

Section 2. **Applicability date.** This act applies only to loans made and approved on or after March 1, 1983. Loans made and approved by the department of administration before March 1, 1983, shall be repaid according to the repayment plan previously approved.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 15, 1983.

CHAPTER NO. 518

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO INSURANCE; CHANGING FORM FILING REQUIREMENTS; CLARIFYING PROVISIONS RELATING TO REINSURANCE AGREEMENTS AND BULK REINSURANCE; PROVIDING THAT INLAND MARINE INSURANCE IS TAXED AT 2 ¾ PERCENT OF NET PREMIUMS WRITTEN; DEFINING AND PROVIDING FOR THE REGULATION OF "PUBLIC ADJUSTERS"; DEFINING A "MANAGING GENERAL AGENT" AND PROVIDING FOR LICENSURE; CLARIFYING WHEN INSURANCE INFORMATION MAY BE OBTAINED ABOUT AN INDIVIDUAL; CLARIFYING THE POLICY AMOUNT THAT MUST BE OFFERED ON TERMINATION OF A GROUP LIFE POLICY; AND PROVIDING THAT A POLICY CLAUSE ON CONFORMITY WITH STATE STATUTES BE MANDATORY; AMENDING SECTIONS 33-1-501, 33-2-119, 33-2-705, 33-2-1206, 33-17-102, 33-17-103, 33-17-201, 33-19-304, 33-20-1210, AND 33-22-229, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-501, MCA, is amended to read:

"33-1-501. Filing and approval of forms. (1) No insurance policy or annuity contract form, application form, printed rider or endorsement

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form, or form of renewal certificate shall be delivered or issued for delivery in this state unless the form has been filed with and approved by the commissioner of this state and the state of domicile of the insurer, where so required. This provision shall not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages, the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers, but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(2) Every such filing shall be made not less than 60 days in advance of any such delivery. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional 60 days the period within which he may so affirmatively approve or disapprove any such form by giving notice of such extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(3) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such details as reasonably to inform the insurer thereof.

(4) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order to which, in his opinion, this section may not practicably be applied or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) This section shall apply also to any such form used by domestic insurers for delivery in a jurisdiction outside this state, if the insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by such official, and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same standards shall apply to such forms as apply to forms for domestic use.

(6) This section and 33-1-502 shall not apply as to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in this state or delivered in this state, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) As to group insurance policies effectuated and delivered outside this state but covering persons resident in this state, group certificates

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which are delivered or issued for delivery in this state shall be filed with the commissioner upon his request."

Section 2. Section 33-2-119, MCA, is amended to read:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks, resident or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus line insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship,

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rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 3. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration — tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report (except as to wet marine and transportation insurance taxed under subsection (4) below) in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance whether designated as a premium or otherwise, received by it during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes the total charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums. This tax may be computed in either of the following ways:

(a) (i) A domestic insurer may choose to compute its tax based on the percentage of its admitted assets invested in Montana securities according to the following schedule:

(A) 2 ¾% of net premiums if the insurer has 0% of its admitted assets invested in Montana securities;

(B) 2 ¼% of net premiums if the insurer has at least 25% of its admitted assets invested in Montana securities;

(C) 1 ¾% of net premiums if the insurer has at least 50% of its admitted assets invested in Montana securities;

(D) 1 ¼% of net premiums if the insurer has at least 75% of its admitted assets invested in Montana securities; and

(E) ¾% of net premiums if the insurer has 100% of its admitted assets invested in Montana securities.

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(ii) "Admitted assets" are those assets allowed in 33-2-501.

(iii) An insurer choosing this method of computation must itemize its Montana securities on a detailed schedule attached to its annual tax report.

(b) (i) If the method provided for in subsection (a) is not used, the insurer shall compute its tax at the rate of 2 ¾ % of the net premiums.

(ii) An insurer choosing this method and having not less than 50% of its paid-in capital stock invested in Montana securities is allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section.

(3) For the purpose of subsection (2):

(a) "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to 10% of the insurer's assets; and

(b) "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(4) (a) On or before March 1 of each year each insurer shall file with the commissioner, on forms as prescribed and furnished or accepted by him, a report of its gross underwriting profit on wet marine and transportation insurance, authorized in 33-1-209, written in this state during the calendar year next preceding and shall at the same time pay to the commissioner a tax of ¾ of 1% of such gross underwriting profit.

(b) Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such wet marine and transportation insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include for computation of the tax prescribed by this subsection (4) the amounts refunded, credited, or paid as participation dividends or savings by such insurers to the holders of such contracts.

(5) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(6) With respect to authorized insurers the premium tax provided by this section shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only

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those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(7) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section."

Section 4. Section 33-2-1206, MCA, is amended to read:

"33-2-1206. Bulk reinsurance — foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or substantially all of its insurance in force in Montana or a major class thereof with an agreement of bulk reinsurance, but no such agreement may become effective unless filed with the commissioner and approved by him in writing. *The commissioner may in his discretion hold a hearing before approving or disapproving an agreement of bulk reinsurance. Factors to be considered on bulk reinsurance agreements include but are not limited to:*

(a) whether the agreement would be inequitable to Montana policyholders;

(b) whether the agreement would substantially reduce security of Montana policyholders; and

(c) whether the agreement would substantially reduce the service to be rendered to Montana policyholders.

(2) The commissioner shall approve *or disapprove* the agreement within a reasonable time after *filing the proposed agreement or, when applicable, after a hearing.*

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval."

Section 5. Section 33-17-102, MCA, is amended to read:

"33-17-102. Definitions. (1) (a) An "adjuster" is a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of such an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts *or otherwise acts on behalf of the insurer.*

(b) A licensed attorney at law who is qualified to practice law in this state, a salaried employee of an insurer or of a managing general agent, or a licensed agent who adjusts or assists in adjustment of losses arising under policies issued by the insurer represented by such agent is not deemed to be an adjuster for the purposes of this chapter.

(c) A "public adjuster" is an adjuster employed by and representing the interests of the insured. The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters.

(2) An "agent" is an individual, firm, or corporation appointed by an insurer to solicit applications for insurance or annuities or to negotiate

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insurance on its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts.

(3) "Life insurance agent" includes also an agent of a life insurer who is or proposes to be licensed as to the same insurer for disability insurance in addition to life insurance and annuities.

(4) A "solicitor" is an individual appointed and authorized by an agent to solicit applications for insurance, other than life insurance or disability insurance, as a representative of such agent, and to collect premiums thereon when expressly so authorized by the agent.

(5) A "managing general agent" is an individual, firm, or corporation appointed as an independent contractor by one or more insurers for the principal purpose of exercising general supervision over the business of the insurer in this state, including the authority to appoint agents for such insurers and to terminate such appointments."

Section 6. Section 33-17-103, MCA, is amended to read:

"**33-17-103. Exceptions and exemptions from definition of agent, managing general agent, and solicitor.** The definitions of agent, *managing general agent,* and solicitor contained in 33-17-102 shall not be *considered* to include:

(1) individuals employed and used by agents for the performance of clerical, stenographic, and similar office duties. Incidental taking of an application for insurance from time to time in the office of the employing agent shall not constitute such an employee as an agent or solicitor if the employee's compensation is not contingent upon or relating to the volume of such applications, insurance, or premiums.

(2) *a supervising salaried officer, supervising salaried employee, or other person or entity controlled by an insurer and compensated strictly on a salary basis by the insurer,* who solicits only with or in conjunction with duly licensed agents of the insurer;

(3) the attorney-in-fact of a reciprocal insurer or the salaried traveling representative of a reciprocal or mutual insurer not compensated on a commission basis;

(4) a person who secures and forwards information for the purpose of an existing group insurance contract or for enrolling individuals under an existing group insurance contract or issuing certificates thereunder where no commission is paid for such services."

Section 7. Section 33-17-201, MCA, is amended to read:

"**33-17-201. License required of agents, managing general agents, and solicitors — forms.** (1) No person shall in this state act as or hold himself out to be an agent or solicitor, as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

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(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold an appointment or license as agent under this chapter, except as provided in 33-17-1104 as to life or disability insurance agents.

(5) The commissioner shall prescribe and furnish forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney at law, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees."

Section 8. Section 33-19-304, MCA, is amended to read:

"33-19-304. Information concerning previous adverse underwriting decisions. An insurance institution, agent, or insurance-support organization may not seek information in connection with an insurance transaction concerning:

(1) any previous adverse underwriting decision experienced by an individual *unless the inquiry also requests the reasons for any previous adverse underwriting decision and the individual is advised of the source of the information*; or

(2) any previous insurance coverage obtained by an individual through a residual market mechanism unless the inquiry also requests the reasons why insurance coverage was previously obtained through a residual market mechanism *and the individual is advised of the source of information.*"

Section 9. Section 33-20-1210, MCA, is amended to read:

"33-20-1210. Conversion on termination of policy. The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 3 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by 33-20-1209, except that the group policy may provide that the amount of such individual policy may not exceed the smaller of:

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(1) the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination; *or*

(2) $10,000."

Section 10. Section 33-22-229, MCA, is amended to read:

"**33-22-229. Conformity with state statutes.** There *must* be a provision as follows:

"Conformity with State Statutes: Any provision of this policy which on its effective date is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.""

Approved April 15, 1983.

CHAPTER NO. 519

AN ACT TO GENERALLY REVISE THE LAWS GOVERNING PROCUREMENT OF SUPPLIES AND SERVICES FOR STATE AGENCIES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 18-4-104, 18-7-104, 18-7-105, AND 87-1-209, MCA; AND REPEALING SECTIONS 18-4-101, 18-4-102, 18-4-201 THROUGH 18-4-203, 18-4-211 THROUGH 18-4-214, 18-7-102, 18-7-103, AND 18-7-111 THROUGH 18-7-113, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 45] may be cited as the "Montana Procurement Act".

Section 2. **Purpose.** The underlying purposes and policies of [sections 1 through 45] are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

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(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system; and

(8) provide safeguards for the maintenance of a procurement system of quality and integrity.

Section 3. **Definitions.** In [sections 1 through 45], unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes which the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a governmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

(7) "Department" means the department of administration.

(8) "Designee" means a duly authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or

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services. A contract resulting from such an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product. Printing does not include rebinding or repair by a library or an office, department, board, or commission thereof of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(16) "Procurement officer" means any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of his authority.

(17) "Purchasing agency" means any governmental body, other than the department, which is authorized by [sections 1 through 45] or its implementing rules or by way of delegation from the director to enter into contracts.

(18) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. The term does not include consulting services as defined in 18-8-102, those services listed in 18-8-103, employment agreements or collective bargaining agreements, the provision by providers of human services regulated by a state agency, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state which utilizes any supplies or services procured under [sections 1 through 45].

Section 4. **Supplementary general principles of law applicable — requirement of good faith.** (1) Unless displaced by the particular provisions of [sections 1 through 45], the principles of law and equity, including the Uniform Commercial Code, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy, supplement the provisions of [sections 1 through 45], except that writs of mandamus and prohibition issued pursuant to Title 27, chapters 26 and 27, may not be used as a remedy for violations of [sections 1 through 45].

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(2) [Sections 1 through 45] require all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Section 5. **Public access to procurement information — records — retention.** (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102.

(2) All procurement records shall be retained and disposed of in accordance with the state records management program.

(3) Written determinations required by [sections 1 through 45] must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program.

Section 6. **General procurement authority and duties of department — rules.** (1) Except as otherwise provided in [sections 1 through 45], the department shall adopt rules, consistent with [sections 1 through 45], governing the procurement and disposal of any and all supplies and services to be procured by the state. The department shall consider and decide matters of policy within the provisions of [sections 1 through 45]. The department may audit and monitor the implementation of its rules and the requirements of [sections 1 through 45].

(2) Except as otherwise specifically provided by law, the department shall, in accordance with its rules:

(a) procure or supervise the procurement of all supplies and services needed by the state; and

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the state.

(3) Nothing contained herein shall preclude the state from doing its own printing on its own printing facilities.

Section 7. **Delegation of authority by department.** Subject to the rules of the department, the director may delegate procurement authority to designees or to any state department, agency, or official.

Section 8. **State procurement rules — delegation — existing rights.** (1) Rules shall be adopted by the department in accordance with the applicable provisions of Title 2, chapter 4.

(2) The department may not delegate its power to adopt rules.

(3) No rule may change a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

Section 9. **Authority to remove or suspend from vendors' list.** (1) The department may remove a person for cause from consideration for award of contracts. The removal may not be for a period of more than 3 years.

(2) The department may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has

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engaged in activities that may lead to removal. The suspension may not be for a period exceeding 3 months unless an indictment has been issued for an offense that would be a cause for removal under subsection (3), in which case the suspension must, at the request of the attorney general, remain in effect until after the trial of the suspended person. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) violation of contract provisions, as set forth in (i) and (ii) of subsection (3)(a), of a character which is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal;

(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules, and after adequate written notice to the affected person of the intent to remove or suspend; and

(c) any other cause the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity for any cause listed in the department's rules.

(4) The department shall issue a written decision to remove or suspend, stating the reasons for the action taken. A copy of the decision must be mailed or otherwise furnished immediately to the person involved.

Section 10. **Remedies prior to and after award.** (1) If a solicitation or award of a contract is in violation of law, the department may apply the remedies provided in subsections (2) and (3).

(2) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award must be:

(a) canceled; or

(b) revised to comply with the law.

(3) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:

(i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or

(ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

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(b) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

(i) declared void; or

(ii) ratified and affirmed if such action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3).

Section 11. **Collection of data concerning public procurement.** All using agencies shall cooperate with the department in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies and services, and the department may employ trained personnel as necessary to carry out this function. All using agencies shall furnish such reports as the department may require concerning usage, needs, and stocks on hand, and the department may prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting of supplies and services.

Section 12. **Definitions.** As used in [sections 12 through 27], the following definitions apply:

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of [sections 1 through 45], and a fee, if any.

(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(4) "Purchase description" means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance.

(7) "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

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Section 13. **Methods of source selection.** Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to [section 14], except as provided in 18-4-104; Title 18, chapter 5; Title 18, chapter 8; and [sections 15 through 17]. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

Section 14. **Competitive sealed bidding.** (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time prior to the date set forth therein for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time prior to bid opening.

(3) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. The amount of each bid and such other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102.

(4) Bids must be unconditionally accepted without alteration or correction, except as authorized in [sections 1 through 45]. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(5) Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes may be permitted in accordance with rules adopted by the department. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(6) The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, including the preferences established by Title 18, chapter 1, part 1. If all bids exceed

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available funds as certified by the appropriate fiscal officer and the low responsive and responsible bid does not exceed such funds by more than 5%, the director or the head of a purchasing agency is authorized, in situations where time or economic considerations preclude resolicitation of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(7) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

Section 15. **Competitive sealed proposals.** (1) When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in [section 14(2)].

(4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award.

(5) The request for proposals must state the relative importance of price and other evaluation factors.

(6) As provided in the request for proposals and under rules adopted by the department, discussions may be conducted with responsible offerors who submit apparently responsive proposals for the purpose of clarification, to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted, after submissions and prior to award, for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing offerors. The department may require the submission of cost or pricing data in connection with an award under this section.

(7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file shall contain the basis on which the award is made.

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Section 16. **Small purchases.** Any procurement not exceeding the amount established by rule may be made in accordance with small purchase procedures established by the department. Procurement requirements may not be artificially divided so as to constitute a small purchase under this section.

Section 17. **Sole source procurement.** A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that there is only one source for the required supply or service item. The department may require the submission of cost or pricing data in connection with an award under this section.

Section 18. **Cancellation of invitations for bids or requests for proposals.** An invitation for bids, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state. The reasons therefor must be made part of the contract file.

Section 19. **Nonresponsibility of bidders and offerors — nondisclosure.** (1) A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

(2) Information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the department or the purchasing agency without prior written consent by the bidder or offeror.

Section 20. **Prequalification of suppliers.** Prospective suppliers may be prequalified for particular types of supplies and services. Solicitation mailing lists of potential contractors must include but not be limited to such prequalified suppliers.

Section 21. **Types of contracts.** Subject to the limitations of this section, any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies or services required except under such a contract.

Section 22. **Approval of accounting system.** Except with respect to firm fixed-price contracts, no contract type may be used unless it has been determined in writing by the department that:

(1) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

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Section 23. **Contract performance security.** (1) For state contracts for the procurement of supplies and services, the department may in its discretion require the filing of security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, materialmen, mechanics, and subcontractors.

(2) If contract performance security is required under subsection (1), the following types of security may be required to be deposited with the state:

(a) a good and sufficient bond with a licensed surety company as surety;

(b) an irrevocable letter of credit not to exceed $100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

(c) lawful money of the United States;

(d) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of Montana or by a banking association located in Montana; or

(e) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(3) The amount and type of the security mentioned above must be determined by the department to be sufficient to cover the risk involved to the state, except that the same shall not be less than 25% of the total contract price, and must be payable to the state of Montana. In determining the amount and type of security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. The department may adopt rules to assist it in making this determination and in protecting the state in dealing with irrevocable letters of credit. Any contract security requirements must be included in the invitations for bids or requests for proposals.

(4) The provisions of Title 18, chapter 2, parts 2 and 3, do not apply to procurements under [sections 1 through 45].

Section 24. **Contracts — terms, extensions, and time limits.** (1) Unless otherwise provided by law, no contract, lease, or rental agreement for supplies or services may be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems and data processing equipment for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds therefor.

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

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(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

Section 25. **Reporting of anticompetitive practices.** If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the department.

Section 26. **Retention of procurement records.** All procurement records must be retained, managed, and disposed of in accordance with Title 2, chapter 6.

Section 27. **Records of sole source procurements.** (1) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under [section 17] for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

(2) The record must be available for public inspection.

Section 28. **Definition.** As used in [sections 28 through 31], "specification" means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

Section 29. **Duties of the department — rules.** (1) The department shall adopt rules governing the preparation, maintenance, and content of specifications for supplies and services required by the state.

(2) The department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies and services required by the state.

Section 30. **Using agencies' advice.** The director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

Section 31. **Competition.** All specifications shall promote overall economy for the purposes intended and encourage competition in satisfying the state's needs and may not be unduly restrictive.

Section 32. **Contract clauses — rules.** (1) The department may adopt rules permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

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(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the contracting parties may mutually agree; or

(e) in the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules adopted under [section 33].

(3) The department may adopt rules permitting or requiring the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying such variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

Section 33. **Cost principles — rules.** The department shall adopt rules setting forth cost principles which must be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. However, if a written determination is approved at a level above the procurement officer, such cost principles may be modified by contract.

Section 34. **Definitions.** As used in [sections 34 through 36], the following definitions apply:

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(1) "Supplies" means supplies owned by the state.

(2) "Surplus supplies" means any supplies having a remaining useful life but that are no longer required by the using agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

Section 35. **Supply management rules.** (1) The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

(b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by rule;

(c) transfer of surplus supplies.

(2) No employee of the owning or disposing agency directly involved with the disposal may purchase supplies sold by his agency.

Section 36. **Allocation of proceeds.** Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee.

Section 37. **Definitions.** As used in [sections 37 through 43], the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

Section 38. **Cooperative purchasing authorized.** The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts that are made available to local public procurement units.

Section 39. **Sale, acquisition, or use of supplies by a public procurement unit.** The department may sell to, acquire from, or use any

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supplies belonging to another public procurement unit independent of the requirements of [sections 12 through 27].

Section 40. **Cooperative use of supplies or services.** The department may enter into an agreement, independent of the requirements of [sections 12 through 27], with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

Section 41. **Joint use of facilities.** The department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

Section 42. **Information and services — fees.** (1) Upon request, the department may make available to public procurement units certain services, including but not limited to the following:

(a) standard forms;

(b) printed manuals;

(c) product specifications and standards;

(d) quality assurance testing services and methods;

(e) qualified products lists;

(f) source information;

(g) common use commodities listings;

(h) supplier prequalification information;

(i) supplier performance ratings;

(j) debarred and suspended bidders lists;

(k) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms;

(l) contracts or published summaries thereof, including price and time of delivery information; and

(m) cooperative purchasing.

(2) The state, through the department, may provide technical services, including but not limited to the following:

(a) development of product specifications;

(b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;

(c) use of product testing and inspection facilities; and

(d) use of personnel training programs.

(3) The department may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (1) and

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(2). Such fees may be used by the department to offset costs incurred in providing such services.

Section 43. **Review of procurement requirements.** To the extent possible, the department may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by state public procurement units. The department may make available all such information to any public procurement unit upon request.

Section 44. **Application.** (1) Except as provided in [section 24], which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, [sections 1 through 45] apply only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.

(2) [Sections 1 through 45] apply to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in [section 3], under any contract; but [sections 1 through 45] do not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in [sections 37 through 43]. [Sections 1 through 45] also apply to the disposal of state supplies. Nothing in [sections 1 through 45] or in rules adopted thereunder prevents any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) [Sections 1 through 45] do not apply to construction contracts.

Section 45. **Local government adoption of procurement provisions.** A political subdivision or school district may adopt any or all parts of [sections 1 through 45] and the accompanying rules promulgated by the department.

Section 46. **State printing, binding, and stationery work — resident preference.** All printing, binding, and stationery work for the state of Montana, except the Montana Code Annotated and certificates of appointment and election to office, must be printed in the state of Montana by a responsible bidder if his bid does not exceed the lowest bid by a nonresident printer by more than the percentage in 18-1-102.

Section 47. Section 18-4-104, MCA, is amended to read:

"18-4-104. Purchases exempt from general requirements. (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided in *[sections 1 through 45]*. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these purchases and the account shall be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and

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in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(3) The department of administration may exempt the department of institutions from the provisions of *[sections 1 through 45]* for the purchase of suitable clothing by the department of institutions for residents of its institutions and community-based programs.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

Section 48. Section 18-7-104, MCA, is amended to read:

"18-7-104. Union label. All printing for which the state of Montana is chargeable shall bear the label of the branch of the international typographical union, the allied printing trades council, or the amalgamated lithographers of America of the locality in which it is printed, except under the following conditions. Printing firms not having the use of the labels and who are desirous of presenting bids for printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:

(1) As a condition to consideration as a responsible bidder, printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(2) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under *[sections 1 through 45], [section 46],* or 18-7-104.

(3) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of *[sections 1 through 45], [section 46],* or 18-7-104, but nothing in these provisions shall be construed as exempting such bidders from any provisions of *[sections 1 through 45], [section 46],* or 18-7-104, and such bidders shall also be required to conform to all provisions thereof."

Section 49. Section 18-7-105, MCA, is amended to read:

"18-7-105. Penalty. Any officer of the state who shall accept any printed matter for which the state is chargeable in whole or in part or who is found to have had printed matter produced, under conditions other than as set forth in *[sections 1 through 45], [section 46],* or 18-7-104 shall be subject to a fine of $50 for each and every offense."

Section 50. Section 87-1-209, MCA, is amended to read:

"87-1-209. Acquisition and sale of lands or waters. (1) The department, with the consent of the commission and, in the case of land

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acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after that public notice, without regard to other laws which provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered or certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the department. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in his absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

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(4) *The* department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature."

Section 51. **Codification instruction.** Sections 1 through 45 are intended to be codified as an integral part of Title 18, and the provisions of Title 18 apply to sections 1 through 45. Section 46 is intended to be codified as an integral part of Title 18, chapter 7, and the provisions of Title 18, chapter 7, apply to section 46.

Section 52. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 53. **Repealer.** Sections 18-4-101, 18-4-102, 18-4-201 through 18-4-203, 18-4-211 through 18-4-214, 18-7-102, 18-7-103, and 18-7-111 through 18-7-113, MCA, are repealed.

Section 54. **Effective date.** (1) Except for sections 24 and 44, this act is effective January 1, 1984.

(2) Sections 24 and 44 are effective on passage and approval.

Approved April 15, 1983.

CHAPTER NO. 520

AN ACT TO AMEND THE MONTANA INSURANCE CODE STANDARD VALUATION LAW; AMENDING SECTIONS 33-2-523 THROUGH 33-2-526, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-523, MCA, is amended to read:

"33-2-523. Contracts on or after the operative date of 33-20-213 — valuation. (1) This section shall apply to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524 *and 33-2-525*, the minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation methods defined in 33-2-525 and 32-2-526(3), 5% interest for group annuity and pure endowment contracts and 3 ½% interest for all other such policies and contracts or in the case

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of policies and contracts, other than annuity and pure endowment contracts, issued on or after March 17, 1973, 4% interest for such policies issued prior to July 1, 1979, and 4 ½% interest for such policies issued on or after July 1, 1979, and the following tables:

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the commissioner's 1941 standard ordinary mortality table:

(i) for such policies issued prior to the operative date of 33-20-206, as amended, and the commissioner's 1958 standard ordinary mortality table for such policies issued on or after that operative date *but prior to the operative date of [section 6 of House Bill 592]*, except that for any category of such policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer with the approval of the commissioner, according to an age younger than the actual age of the insured; *or*

(ii) for such policies issued on or after the operative date of [section 6 of House Bill 592]:

(A) the commissioner's 1980 standard ordinary mortality table;

(B) at the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors; or

(C) any ordinary mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 standard industrial mortality table for such policies issued prior to the operative date of 33-20-207, as amended, and for such policies issued on or after that operative date *the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies*;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the group annuity mortality table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

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(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit, *or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies*;

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table *or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such policies*;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the commissioner."

Section 2. Section 33-2-524, MCA, is amended to read:

"33-2-524. Individual and group annuity and pure endowment contracts — valuation. (1) *Except as provided in [section 3], the* minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this section, as defined herein, and for all annuities and pure endowments purchased on or after that operative date, under group annuity and pure endowment contracts is the commissioner's reserve valuation methods defined in 33-2-525 and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued prior to July 1, 1979, excluding any disability and accidental death benefits in

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such contracts, the 1971 individual annuity mortality table or any modification of this table approved by the commissioner and 6% interest for single premium immediate annuity contracts and 4% interest for all other individual annuity and pure endowment contracts;

(b) for individual single premium immediate annuity contracts issued on or after July 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table *or any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such contracts* or any modification of *such tables* approved by the commissioner and 7 ½% interest;

(c) for individual annuity and pure endowment contracts issued on or after July 1, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 individual annuity mortality table *or any individual annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such contracts* or any modification of *such tables* approved by the commissioner and 5 ½% interest for single premium deferred annuity and pure endowment contracts and 4 ½% interest for all other such individual annuity and pure endowment contracts;

(d) for all annuities and pure endowments purchased prior to July 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table or any modification of the table approved by the commissioner and 6% interest;

(e) for all annuities and pure endowments purchased on or after July 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 group annuity mortality table *or any group annuity mortality table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for such annuities and pure endowments* or any modification of *such tables* approved by the commissioner and 7 ½% interest.

(2) After March 17, 1973, any insurer may file with the commissioner a written notice of its election to comply with the provisions of subsection (1) after a specified date before January 1, 1979, which shall be the operative date of subsection (1) for such insurer. An insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no such election, the operative date of this section for such insurer shall be January 1, 1979."

Section 3. **Interest rates — determination of minimum standard valuation.** (1) The calendar year statutory valuation interest rates as established in this section must be used in determining the minimum standard for the valuation of:

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(a) all life insurance policies issued in a particular calendar year on or after the operative date of [section 6 of House Bill 592];

(b) all individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1984;

(c) all annuities and pure endowments purchased in a particular calendar year on or after January 1, 1984, under group annuity and pure endowment contracts; and

(d) the net increase, if any, in a particular calendar year after January 1, 1984, in amounts held under guaranteed interest contracts.

(2) Except as provided in subsection (3), the calendar year statutory valuation interest rates are determined as follows and the results rounded to the nearer ¼ of 1%, when R_1 is the lesser of R and .09, R_2 is the greater of R and .09, R is the reference interest rate established in [section 5], and W is the weighting factor established in [section 4]:

(a) for life insurance:

Interest rate = $.03 + W(R_1 - .03) + (W/2)(R_2 - .09)$;

(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

Interest rate = $.03 + W(R - .03)$;

(c) for other annuities with:

(i) cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subsection (2)(b), the formula for life insurance stated in subsection (2)(a) applies to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years and the formula for single-premium immediate annuities stated in subsection (2)(b) applies to annuities and guaranteed interest contracts with guarantee durations of 10 years or less;

(ii) no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single-premium immediate annuities stated in subsection (2)(b) applies; and

(iii) cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, the formula for single-premium immediate annuities stated in subsection (2)(b) applies.

(3) If the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than ½ of 1%, the calendar year statutory valuation interest rate for such life insurance policies is equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of this subsection, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980 (using the reference interest rate defined for 1979) and must be determined for each subsequent calendar year regardless of when [section 8] becomes operative.

Section 4. **Interest rate weighting factor.** (1) The weighting factors referred to in the formulas stated in [section 3] are as follows:

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(a) (i) for life insurance:

Guarantee Duration in Years	Weighting Factors
10 or less	.50
More than 10 but not more than 20	.45
More than 20	.35

(ii) for life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, that are guaranteed in the original policy;

(b) .80 for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options;

(c) for other annuities and for guaranteed interest contracts, except as stated in subsection (1)(b), according to the guarantee duration established in subsection (2) and the type of plan established in subsection (3):

(i) for annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration in Years	Weighting Factor for Plan Type A	B	C
5 or less	.80	.60	.50
More than 5 but not more than 10	.75	.60	.50
More than 10 but not more than 20	.65	.50	.45
More than 20	.45	.35	.35

(ii)	Plan Type A	B	C
for annuities and guaranteed interest contracts valued on a change-in-fund basis, the factors shown in subsection (1)(c)(i) increased by:	.15	.25	.05

(iii)	Plan Type A	B	C
for annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) that do not guarantee interest on considerations received more than 1 year after issue or purchase and for annuities and guaranteed interest contracts valued on a change-in-fund basis that do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors set forth in subsection (1)(c)(i) or derived in subsection (1)(c)(ii) increased by:	.05	.05	.05

(2) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is

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the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(3) Plan types used in subsection (1)(c) are:

(a) Plan Type A—No withdrawal is permitted or at any time policyholder may withdraw funds only:

(i) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(ii) without such adjustment but in installments over 5 years or more; or

(iii) as an immediate life annuity.

(b) Plan Type B—(i) Before expiration of the interest rate guarantee, no withdrawal is permitted or a policyholder may withdraw funds only:

(A) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company;

(B) without such adjustment but in installments over 5 years or more.

(ii) At the end of the interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than 5 years.

(c) Plan Type C—A policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or installments over less than 5 years either:

(i) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or

(ii) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(4) (a) An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change-in-fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis.

(b) As used in subsection (4):

(i) issue year basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract; and

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(ii) change-in-fund basis of valuation is a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

Section 5. **Reference interest rate.** (1) The reference interest rate referred to in the formulas in [section 3] is:

(a) for all life insurance, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's corporate bond yield average—monthly average corporates;

(b) for single-premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of 36 months and the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates;

(d) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a year-of-issue basis, except as stated in subsection (1)(b), with guarantee duration of 10 years or less, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates;

(e) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of Moody's corporate bond yield average—monthly average corporates; or

(f) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options valued on a change-in-fund basis, except as stated in subsection (1)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of Moody's corporate bond yield average—monthly average corporates.

(2) If Moody's corporate bond yield average—monthly average corporates is no longer published by Moody's investors service, inc., or if the national association of insurance commissioners determines that Moody's corporate bond yield average—monthly average corporates as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative

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method for determination of the reference interest rate adopted by the national association of insurance commissioners and approved by the commissioner may be substituted.

Section 6. Section 33-2-525, MCA, is amended to read:

"33-2-525. Commissioner's reserve valuation method. (1) Except as otherwise provided in subsection *(4)* and 33-2-526(3), reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) a net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such policy;

(b) a net 1-year term premium for such benefits provided for in the first policy year.

(2) (a) For every life insurance policy issued on or after January 1, 1987, for which the contract premium in the first policy year exceeds that of the second year, for which no comparable additional benefit is provided in the first year for such excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than such excess premium, the reserve according to the commissioner's reserve valuation method, as of any policy anniversary occurring on or before the assumed ending date as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium, is, except as otherwise provided in 33-2-526, the greater of the reserve as of such policy anniversary calculated as described in subsection (1) or the reserve as of such policy anniversary calculated as described in subsection (1) with the following exceptions:

(i) the value defined in subsection (1)(a) is reduced by 15% of the amount of such excess first-year premium;

(ii) all present values of benefits and premiums are determined without reference to premiums or benefits provided for in the policy after the assumed ending date;

(iii) the policy is assumed to mature on such assumed ending date as an endowment; and

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(iv) the cash surrender value provided on such assumed ending date is considered an endowment benefit.

(b) In making the comparisons in subsection (2)(a), the mortality and interest bases stated in 33-2-523 and [section 3] must be used.

(3) Reserves according to the commissioner's reserve valuation method for the following shall be calculated by a method consistent with the principles of this section, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums:

(a) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;

(b) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended;

(c) disability and accidental death benefits in all policies and contracts; and

(d) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts.

(4) (a) Subsection *(4)*(b) applies to any annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

(b) Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations required by the terms of such contract that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values."

Section 7. Section 33-2-526, MCA, is amended to read:

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"33-2-526. Limits — options — minimum reserves. (1) In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated in accordance with the methods set forth in 33-2-525 and subsection (3) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) Reserves for any category of policies, contracts, or benefits as established by the commissioner may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(3) If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon, but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. *The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in 33-2-524 and [section 3].*

(4) For every life insurance policy issued after December 30, 1986, for which the gross premium in the first policy year exceeds that of the second year, for which no comparable additional benefit is provided in the first year for such excess, and that provides an endowment benefit, a cash surrender value, or a combination of both in an amount greater than such excess premium, subsections (1) through (3) of this section must be applied as if the method actually used in calculating the reserve for such policy were the method described in 33-2-525(1). The minimum reserve at each policy anniversary of such a policy must be the greater of the minimum reserve calculated in accordance with 33-2-525 and the minimum reserve calculated in accordance with this section."

Section 8. **Undeterminable reserves — rules by commissioner.** If a plan of life insurance provides for future premium determination the amounts of which are to be determined by the insurance company based on current estimates of future experience, or if a plan of life insurance or annuity is of such a nature that the minimum reserves cannot be determined by the methods described in 33-2-525 and 33-2-526, the reserves that are held under any such plan must, as determined by regulations promulgated by the commissioner:

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(1) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(2) be computed by a method which is consistent with the principles of 33-2-521 through 33-2-526 and 33-2-531 through 33-2-535 and [sections 3 through 5].

Section 9. **Codification instruction.** Sections 3 through 5 and 8 are intended to be codified as an integral part of Title 33, chapter 2, part 5, and the provisions of Title 33 apply to sections 3 through 5 and 8.

Approved April 15, 1983.

CHAPTER NO. 521

AN ACT TO REMOVE THE AGE DISCRIMINATION PROVISION FROM THE LAW GOVERNING TENURE; AMENDING SECTIONS 20-4-203 AND 20-4-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-203, MCA, is amended to read:

"20-4-203. Teacher tenure. Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher shall be deemed to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204."

Section 2. Section 20-4-204, MCA, is amended to read:

"20-4-204. Termination of tenure teacher services. (1) Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of 20-4-203, they shall, before April 1, notify such teacher of such termination in writing by certified or registered letter or by personal notification for which a signed receipt is returned. Such notification shall include a printed copy of this section for the teacher's information.

(2) Any tenure teacher who receives a notice of termination may request, in writing 10 days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within 10 days after the request.

(3) Within 10 days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their

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termination action within 10 days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the tenure teacher may appeal their decision to the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law.

(4) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title."

Approved April 15, 1983.

CHAPTER NO. 522

AN ACT PROVIDING THAT A PERSON INVOLUNTARILY DETAINED OR EXAMINED OR SUBJECT TO AN ORDER FOR SHORT-TERM TREATMENT OR LONG-TERM CARE AND TREATMENT UNDER TITLE 53, CHAPTER 21, MCA, MUST BE GIVEN NOTICE IN WRITING OF HIS RIGHT TO APPEAL; PROVIDING FOR APPEALS TO BE FILED WITHIN 90 DAYS OF SERVICE OF NOTICE; AMENDING SECTIONS 53-21-114 AND 53-21-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-114, MCA, is amended to read:

"**53-21-114. Notice of rights to be given.** (1) Whenever a person is involuntarily detained or is examined pursuant to 53-21-121 through 53-21-126, the person shall *at the time of detention or examination* be informed of his constitutional rights and his rights under this part. *Within 3 days of such detention or examination he must also be informed in writing by the county attorney of such rights.*

(2) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised *in writing* of his right to appeal the order by the court at the conclusion of any hearing the result of which such an order may be entered."

Section 2. Section 53-21-131, MCA, is amended to read:

"**53-21-131. Appeal procedure.** Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases, *except that the appeal may be taken at any time within 90 days of the actual service of the written notice of the right to appeal required by 53-21-114 or within 90 days after discharge, whichever is later.* The patient shall not be released pending appeal unless ordered by the court. The appeal shall have priority above all other matters before the supreme court."

Approved April 15, 1983.

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CHAPTER NO. 523

AN ACT TO CLARIFY THAT THE PROPERTY OF NONPROFIT ORGANIZATIONS THAT OWN AND OPERATE FACILITIES FOR THE CARE OF THE DEVELOPMENTALLY DISABLED, MENTALLY ILL, AND VOCATIONALLY HANDICAPPED ARE EXEMPT FROM PROPERTY TAXATION; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals;

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

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(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from the fee in lieu of tax.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) automobiles and trucks having a rated capacity of three-quarters of a ton or less; *and*

(l) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1983.

CHAPTER NO. 524

AN ACT PROVIDING THAT A JUDGE ELECTED OR APPOINTED TO OFFICE ON OR AFTER JULY 1, 1983, WHO RETIRES INVOLUNTARILY BEFORE AGE 65 CANNOT RECEIVE FULL STATE RETIREMENT BENEFITS; INCREASING CERTAIN DISTRICT COURT FEES; REDISTRIBUTING THE PERCENTAGE AMOUNT OF COURT FEES DEPOSITED IN THE COUNTY AND STATE GENERAL FUNDS; INCREASING CERTAIN MEMBERS' CONTRIBUTIONS TO THE JUDGES' RETIREMENT SYSTEM; INCREASING THE AMOUNT OF COURT FEES DEPOSITED IN THE RETIREMENT SYSTEM; AMENDING SECTIONS 19-5-402, 19-5-404, 19-5-503, AND 25-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

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(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, *$25*; and for filing a complaint in intervention, from the intervenor, *$25*;

(b) from each defendant or respondent, on his appearance, *$15*;

(c) on the entry of judgment, from the prevailing party, $10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, $2;

(k) for transmission of records or files or transfer of a case to another court, $5;

(l) for filing and entering papers received by transfer from other courts, $10;

(m) for issuing a marriage license, $30;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for filing a will for probate.

(2) Except as provided in subsection (3), 32% of all fees collected by the clerk of the district court shall be deposited in and credited to the general fund of the county. The remaining portion of the fees shall be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404."

Section 2. Section 19-5-402, MCA, is amended to read:

"19-5-402. Member's contribution deducted from salary. Every member shall be required to contribute into the fund a sum equal to 6% of his monthly salary, *except that a member elected or appointed to office after July 1, 1983, shall be required to contribute into the fund a sum equal to 7% of his monthly salary beginning on the first day of*

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his term. This sum shall be deducted from his salary and credited to his account in the fund."

Section 3. Section 19-5-404, MCA, is amended to read:

"19-5-404. Contributions by the state. The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit *68%* of the fees collected under 25-1-201 to the state, which shall first deposit in the fund an amount equal to *31%* of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund."

Section 4. Section 19-5-503, MCA, is amended to read:

"19-5-503. Involuntary retirement allowance. (1) If a contributor is involuntarily discontinued from service after having completed 5 years of total service but before reaching retirement age, he shall, upon filing an application in the manner prescribed by the board, be paid whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus an annuity which is the actuarial equivalent of the present value of the state annuity then standing to his credit.

(2) If a contributor *elected or appointed to office prior to July 1, 1983,* is involuntarily discontinued from service after having completed 12 years of total service but before reaching retirement age, he shall, upon filing an application in the manner prescribed by the board, be paid whichever of the following allowances that he elects:

(a) the full amount of his accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus a state annuity in an amount which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 19-5-502.

(3) If a contributor elected or appointed to office after July 1, 1983, is involuntarily discontinued from service after having completed 12 years of total service but before reaching retirement age, he may apply for and receive benefits under this chapter pursuant to subsection (1)."

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved April 15, 1983.

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CHAPTER NO. 525

AN ACT TO CLARIFY THE DEFINITION OF "SCHOOL BUS" AS DEFINED IN TITLE 20 AND TITLE 61 BY EXEMPTING CERTAIN MOTOR VEHICLES FROM THE DEFINITION; AMENDING SECTIONS 20-10-101 AND 61-1-116, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-101, MCA, is amended to read:

"20-10-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Transportation" shall mean:

(a) a district's conveyance of a pupil by a school bus between his legal residence and the school designated by the trustees for his attendance;

(b) a district's conveyance of a pupil by a school bus between his regular school of attendance and the vocational-technical secondary schools designated by the trustees for his attendance if the secondary school is located in some other school district; or

(c) "individual transportation" whereby a district is relieved of actually conveying a pupil. Such individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(2) An "eligible transportee" shall mean a public school pupil who:

(a) is not less than 5 years of age nor has attained his 21st birthday;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries, resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(d) is deemed by law to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(3) *(a)* A "school bus" *means, except as provided in subsection (3)(b),* any motor vehicle *that:*

(i) complies with the bus standards established by the board of public education as verified by the Montana division of motor vehicles' semiannual inspection of school buses and the superintendent of public instruction; and

(ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under

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contract with a district or public agency to provide transportation of pupils to or from school.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events."

Section 2. Section 61-1-116, MCA, is amended to read:

"61-1-116. School bus. "School bus" *has the meaning given in 20-10-101."*

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1983.

CHAPTER NO. 526

AN ACT TO PROVIDE THAT WHEN IT IS REQUIRED THAT LEGAL NOTICE BE GIVEN TO THE OWNER OF REAL PROPERTY NOTICE MUST ALSO BE GIVEN TO A PURCHASER OF THE PROPERTY UNDER A CONTRACT FOR DEED AND ANY ASSIGNEE OR SUCCESSOR OF SUCH A PURCHASER; AMENDING SECTIONS 7-2-4312, 7-3-1309, 7-3-4431, 7-3-4448, 7-13-2304, 7-14-4109, 7-15-4215, 7-22-2406, 7-22-2446, 15-7-102, 15-7-208, 15-15-101, 15-18-202, 15-23-102, 50-62-103, 69-4-317, 69-4-325, 69-4-353, 70-30-203, 76-3-605, 80-7-114, 80-7-206, 82-2-224, 82-4-222, 82-4-239, 82-10-503, 85-2-232, 85-2-307, AND 85-15-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Notice to purchaser of property under contract for deed.** (1) As used in this section, "purchaser under contract for deed" means:

(a) any person who:

(i) has entered into a contract with the record owner of real property in which it was agreed that the record owner will deliver the deed to the property to the purchaser when certain conditions have been met, such as completion of payments by the purchaser; and

(ii) has recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21;

(b) any assignee or successor of a person included under subsection (a), if such assignee or successor has also recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21.

(2) When it is required by statute that legal notice be given to the owner of real property, the same notice must be given to a purchaser of that property under a contract for deed.

Section 2. Section 7-2-4312, MCA, is amended to read:

"7-2-4312. Resolution of intent by first-class city — notice. When, in the judgment of any city council of a city of the first class expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of such city shall be extended so as to include the same within the corporate limits thereof, the city clerk of such city shall:

(1) immediately notify in writing, addressed to the address to which tax notices are sent, all owners *and purchasers under contracts for deed* of property in the territory to be embraced; and

(2) cause a notice to be published in the newspaper published nearest such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, at least once a week for 2 successive weeks."

Section 3. Section 7-3-1309, MCA, is amended to read:

"7-3-1309. Division of assessment. (1) There shall be in the department of finance a division of assessment, the head of which shall be the assessor. The assessor and his deputies shall have the powers, qualify in the manner, and perform the duties prescribed for county assessors and deputy assessors by general law.

(2) The assessor shall also be in charge of the preparation of all special assessments for public improvements, the giving of notice of such assessments to property owners *and purchasers of property under contracts for deed*, and the certification of all unpaid assessments to the director of finance."

Section 4. Section 7-3-4431, MCA, is amended to read:

"7-3-4431. Department of finance. (1) The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the municipality; the purchase, storage, and distribution of supplies needed by the various departments; the making and collection of special assessments; the issuance of licenses; the collection of license fees and taxes; and such other duties as the commission may by ordinance require.

(2) He shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable the

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books of financial accounts shall be kept in the office of the department of finance. He shall require daily departmental reports of money receipts and the disposition thereof and shall require of each, in such form as may be prescribed, current financial and operating statements exhibiting each transaction and the cost thereof. Upon the death, resignation, removal or expiration of the term of any officer, he shall examine the accounts of such officer and report his findings to the city manager.

(3) He shall have charge of the preparation and certification of all special assessments for public improvements, the mailing of notices of such assessments to property owners and *purchasers of property under contracts for deed and* all other duties connected therewith, the collection of such assessments as are payable directly to the municipality, and the preparation and certification of all unpaid assessments to the county treasurer for collection. He shall issue all licenses and collect all fees therefor and shall pay the same into the treasury in the manner provided by ordinance.

(4) The director of finance shall be the custodian of all public money of the municipality and all other public money coming into his hands. He shall keep and preserve such money in the place or places determined by ordinance or by the provisions of any law applicable thereto. Except as otherwise provided in this part or part 43, he shall collect, receive, and disburse all public money of the municipality upon warrant and shall also receive and disburse all other public money coming into his hands in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds."

Section 5. Section 7-3-4448, MCA, is amended to read:

"**7-3-4448. Vacating or changing name of street.** (1) The commission, in vacating any street or part of a street or changing the name of any street, may include in one ordinance the change of name or the vacation or narrowing of more than one street, alley, or avenue. Before vacating any street or part thereof or narrowing any street, the commission shall first pass a resolution declaring its intention to do so.

(2) The city manager shall serve notice of the resolution, in the manner that service of summons is required to be made in civil actions, upon all persons *who are owners or purchasers under contracts for deed of* property *that* abuts upon the portion of the street affected by the proposed vacation or narrowing and shall publish notice once in one daily newspaper of general circulation in the municipality if there is one or if not, once in one weekly newspaper of like circulation. The notice shall state the time and place at which objections will be heard.

(3) Unless at least 51% of the affected property owners object to the proposed vacation or narrowing, the commission may by ordinance declare such vacation or narrowing. The order of the commission vacating or narrowing a street or alley which has been dedicated to public use by the proprietor, to the extent that it is vacated or narrowed, operates as a revocation of the acceptance thereof by the commission, but the right-of-way and easement therein of any lot owner is not impaired thereby."

Section 6. Section 7-13-2304, MCA, is amended to read:

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"7-13-2304. Notice of intention to levy tax. (1) When the written estimate of the amount of money required has been delivered to the board of county commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof.

(2) Such notice shall be given:

(a) by posting notice thereof in five public places within the county and within the boundaries of the lands upon which the tax is to be levied;

(b) by publishing a copy of the notice once each week for 2 consecutive weeks in a newspaper published in each county wherein the district is located; and

(c) by forwarding, by regular first-class mail or registered or certified mail at least 10 days prior to the hearing provided for in 7-13-2306(4), a copy of the notice addressed to the owners *and the purchasers under contracts for deed* of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district."

Section 7. Section 7-14-4109, MCA, is amended to read:

"7-14-4109. Power to order certain improvements without creation of special improvement district. (1) Without the formation of a special improvement district, the city council may order sidewalks, curbs, or gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.

(2) Whenever the council orders any such sidewalk, curb, or gutter constructed or any such alley approach constructed or replaced, the order shall be entered upon the minutes of the council and shall name the street along which the sidewalk, curb, or gutter is to be constructed or along which the alley approach is to be constructed or replaced.

(3) After the making of such order, written notice thereof shall be given *to* the owner or agent of the owner *and to any purchaser under contract for deed* of such property or the owners or agents of all adjacent owners having access to their properties by the alley approach, as appropriate, in such manner as the council may direct.

(4) If the owner or agent of the owner of such lot or parcel of land or if the owners or agents of all adjacent owners having access to their property by the alley approach fail or neglect for a period of 30 days after the date of service of the notice to cause such sidewalk, curb, or gutter to be constructed or to cause such alley approaches to be constructed or replaced, the city may construct or cause the sidewalk, curb, or gutter to be constructed or may construct or cause the alley approach to be constructed and shall assess the cost thereof, including engineering costs and the costs enumerated in 7-12-4121 and 7-12-4169, against the property in front of which the same is constructed or against the lots or parcels of land having access via the constructed alley approaches. The collection of the assessed costs shall be as provided in 7-12-4181 through 7-12-4191.

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(5) (a) When any sidewalk, curb, or gutter or alley approach is constructed by or under direction of the city council, payment for the construction shall be made by special warrants in such form as may be prescribed by ordinance and drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund, as appropriate, and the council may provide for the payment of interest annually.

(b) The warrants drawn on the special alley approach fund shall bear interest at a rate of up to 6% a year."

Section 8. Section 7-15-4215, MCA, is amended to read:

"7-15-4215. Notice of hearing on urban renewal plan. (1) The notice required by 7-15-4214(1) shall be given by publication once each week for 2 consecutive weeks, not less than 10 or more than 30 days prior to the date of the hearing, in a newspaper having a general circulation in the urban renewal area of the municipality and by mailing a notice of such hearing, not less than 10 days prior to the date of the hearing, to the persons whose names appear on the county treasurer's tax roll as the owners, reputed owners, *or purchasers under contracts for deed* of the property, at the address shown on the tax roll.

(2) The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration."

Section 9. Section 7-22-2406, MCA, is amended to read:

"7-22-2406. Notice of hearing on petition to create district. (1) If addresses are known, the commissioners shall cause notice of the hearing provided for in 7-22-2403 to be mailed to each nonresident owner *and purchaser under contract for deed* of taxable real and personal property within the proposed district.

(2) The commissioners shall cause notice to be posted in three public places within the district. Whenever the district is partly in one county and partly in another county, notice must be posted in each county but posting need not be in three places in each county.

(3) The commissioners shall also cause notice to be given of the time and place of the hearing and the methods of objection by publication in a newspaper within or nearest to the district and, if the district is partly in one county and partly in another county, in a newspaper in each county, if such newspaper exists. The publication must be for two weekly issues.

(4) Posting and first publication shall be at least 10 days before the hearing."

Section 10. Section 7-22-2446, MCA, is amended to read:

"7-22-2446. Hearing on petition for dissolution — notice. Upon the filing of a petition for dissolution, the board of county commissioners shall set a time for hearing the petition and shall cause notice thereof to be mailed to all nonresident property owners *and purchasers*

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under contracts for deed within the district whose addresses are known, to be posted in at least three public places within the district, and to be published at least once in the official newspaper of the county published in the district, the posting and publication to be at least 10 days before the date of hearing. Whenever the district is partly in one county and partly in another county, notice must be posted in each county, but posting need not be in three places in each county, and notice must be published in the official newspaper of each county."

Section 11. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) It shall be the duty of the department of revenue to cause to be mailed to each owner *and purchaser under contract for deed* a notice of the classification of the land owned *or being purchased* by him and the appraisal of the improvements thereon.

(2) If the owner of any land and improvements is dissatisfied with the appraisal or classification of his land or improvements, he may submit his objection in writing to the department's agent. The department shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing. Thereafter, the department shall determine the true and correct appraisal and classification of such land or improvements and forthwith notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When so determined, the land shall be classified and improvements appraised in the manner ordered by the department.

(3) Whether a hearing as provided in subsection (2) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted his objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(4) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make such records available for inspection during regular office hours.

(5) If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the proper court or courts."

Section 12. Section 15-7-208, MCA, is amended to read:

"15-7-208. Reclassification by department. The department of revenue or its agent may reclassify land as nonagricultural upon giving due notice to the property owner *or any purchaser under contract for deed*

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under the provisions of 15-7-102. Upon notice of a change in classification of land from agricultural to another use, the property owner may petition the department to reclassify the land as agricultural by completing a form prescribed by the department and by producing whatever information is necessary to prove that the subject land meets the definition of agricultural land embodied in 15-7-202."

Section 13. Section 15-15-101, MCA, is amended to read:

"15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They shall receive compensation of $25 a day and travel expenses as provided for in 2-18-501 through 2-18-503, as amended, only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses shall be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board must meet on the third Monday of April in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but, except as provided in 15-2-201, not later than 60 days after the department of revenue or its agent:

(a) has mailed notice of classification and appraisal to all property owners *and purchasers under contracts for deed* as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners *and purchasers under contracts for deed.*

(3) In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county or, if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board.

(4) Challenges to a department of revenue rule governing the assessment of property or to an assessment procedure shall apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-2-307 through 15-2-310."

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Section 14. Section 15-18-202, MCA, is amended to read:

"15-18-202. Notice of application for tax deed. (1) The purchaser of property sold for delinquent taxes or his assignee must, at least 60 days previous to the expiration of the time for redemption or at least 60 days before he applies for a deed, serve upon the owner of the property purchased, if known, *any purchaser of the property under contract for deed, if known,* and upon the person occupying the property, if the said property is occupied, and if the records in the office of the county clerk and recorder show an unreleased mortgage or mortgages upon the property purchased, upon the mortgagee or mortgagees named in said mortgage or mortgages or, if assigned, upon the assignee or assignees of said mortgage or mortgages, a written notice stating that said property or a portion thereof has been sold for delinquent taxes, giving the date of sale, the amount of property sold, the amount for which it was sold, the amount due, and the time when the right of redemption will expire or when the purchaser will apply for a tax deed. The owner of the property or the mortgagee or the assignee of said mortgagee has the right of redemption indefinitely, until such notice has been given and the deed applied for, upon the payment of fees, percentages, penalties, and costs required by law.

(2) Notice *to* any owner, *purchaser of property under contract for deed,* mortgagee, or assignee of mortgagee shall be given by registered or certified letter addressed to such *owner, purchaser,* mortgagee, or assignee at the post-office address of said owner, *purchaser,* mortgagee, or assignee as disclosed by the mortgage records in the office of the county clerk and recorder. In case of unoccupied property or a mining claim, such notice must be by registered or certified mail deposited in the post office, addressed to any known owner residing in or outside of said county, with the postage thereon prepaid, at least 60 days before the expiration of the time for redemption or at least 60 days before the purchaser applies for such tax deed, in addition to notice to the mortgagee or assignee of mortgagee in the manner and as hereby is provided.

(3) In all cases where the post-office address of the owner, *purchaser,* mortgagee, or assignee is unknown, the applicant shall publish once a week for 2 successive weeks in a newspaper published in the county where the property is situated a notice substantially in the following form:

Notice of Application for Tax Deed

Notice is hereby given that the undersigned will on the .... day of ....., 19..., apply to the county treasurer of ..... county for a tax deed to the following described property, to wit:

(Describe property)

Amount due $.....
Date .....

.....(Applicant)

(4) The first publication of such notice must be made at least 60 days before the date of redemption or application for said deed.

(5) In all cases due proof of service of notice in whatever manner given, supported by the affidavit required by law, must be filed immediately with

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the clerk and recorder of the county in which the property is situated and be kept as a permanent file in his office, and such proof of notice when so filed shall be prima facie evidence of the sufficiency of the notice."

Section 15. Section 15-23-102, MCA, is amended to read:

"15-23-102. Notice of assessment — opportunity for conference — appeal. After assessing property under 15-23-101, the department shall notify the owner *and any purchaser under contract for deed* of such property, in writing, of the assessed value it has determined. Within 20 days following notification, the taxpayer may demand a review of the validity of the department's assessment. The department shall conduct an assessment review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act. However, a party has the right of discovery prior to any assessment revision review conference. Upon consideration following such conference, the department may revise the assessment. Appeals from the final decision may be taken to the state tax appeal board."

Section 16. Section 50-62-103, MCA, is amended to read:

"50-62-103. Service of order to repair or demolish structure. (1) If the state fire marshal, a deputy state fire marshal, or any officer mentioned in 50-62-101, upon an examination or inspection, finds that a building or other structure which for want of proper repair or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections or defective heating apparatus or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, he shall order the structure to be repaired, torn down, or demolished and all materials removed and all dangerous conditions remedied.

(2) The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in that court.

(3) A copy of the order filed as aforesaid, together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the court his objections or answer thereto within the time specified in 50-62-104, shall be served upon the owner *and any purchaser under contract for deed* of the building or structure directed to be altered, repaired, or demolished. If there is a tenant occupying the building, service shall also be made upon him. Service shall be made upon the owner and occupant, if there is one, personally either within or without the state.

(4) If the whereabouts of the owner *or any purchaser under contract for deed* is unknown and cannot be ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of the notice upon the owner *or any purchaser under contract for deed* may be

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made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a newspaper printed and published in the county in which the building or structure is located and by posting a copy thereof in a conspicuous place upon the building or structure, and the service so made is complete upon the expiration of the publication period. Proof of service of the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof."

Section 17. Section 69-4-317, MCA, is amended to read:

"69-4-317. Publication and distribution of notice. (1) Notice shall be published in full five times in a daily newspaper or once in a weekly newspaper of general circulation in the county, city, or town in which said district is located. A copy of such notice shall be mailed by the governing body to each owner *and purchaser under contract for deed* of land within the proposed district whose property will be assessed for the cost of the improvement. The address to be used for said purpose shall be that last appearing on the real property assessment rolls of the county wherein said property is located.

(2) Mailed notices and the published notice shall state where a copy of the resolution will be available for inspection by any interested parties."

Section 18. Section 69-4-325, MCA, is amended to read:

"69-4-325. Notice of hearing on proposed assessments. (1) After the preparation of the ordinance provided for in 69-4-324, notice of a public hearing on the proposed assessments shall be given.

(2) Such notice shall be published one time in a newspaper in which the first notice of hearing was published at least 20 days before the date fixed for the hearing and shall be mailed by the governing body not less than 15 days prior to the date fixed for such hearing to each owner *and purchaser under contract for deed* of real property whose property will be assessed for part of the cost of the improvement at the addresses appearing on the last completed real property assessment rolls of the county wherein said affected property is located.

(3) (a) Each notice shall state that at the specified time and place, the governing body will hold a public hearing upon the proposed assessments and shall state that any owner of any property to be assessed pursuant to the ordinance will be heard on the question of whether his property will be benefited by the proposed improvement to the amount of the proposed assessment against his property and whether the amount assessed against his property constitutes more than his proper proportional share of the total cost of the improvement.

(b) The notice shall further state where a copy of the ordinance proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection and that, subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the ordinance at the conclusion of the hearing.

(c) The published notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property

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therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed and the terms of installment financing, if any. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this part."

Section 19. Section 69-4-353, MCA, is amended to read:

"69-4-353. Conversion of facilities on public property — notice to landowners. (1) Upon completion of the conversion of the overhead electric or communication facilities on public lands and right-of-way to underground, the public utility shall file a verified statement of the costs of such conversion with the governing body.

(2) The governing body shall mail to each landowner *and purchaser of property under contract for deed* a notice stating that:

(a) service from the underground facilities is available;

(b) the landowner has 60 days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on his lot or parcel to underground service facilities; and

(c) after the 60-day period following the date of the mailing of the notice, the governing body will order the public utility to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area."

Section 20. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must contain:

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, *purchasers under contracts for deed,* mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

(5) a description of each piece of land sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement or a

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town or a county, the county commissioners of the county may be named as plaintiff.

(6) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

Section 21. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on preliminary plat. (1) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

(3) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, *and each purchaser under contract for deed of property* immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing."

Section 22. Section 80-7-114, MCA, is amended to read:

"80-7-114. Removal of infected trees — assessment of costs. (1) If a person owning any orchard or nursery stock infected or infested with any injurious insect pest or disease and which becomes a menace to the agricultural or fruit industry or a menace to ornamental trees, shrubs, plants, or vines fails to comply with the instructions of the department for the destruction or control of the injurious insect pest or disease or the destruction of the infested or infected orchard or nursery stock within the

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time specified by the department, the department may condemn, remove, or destroy the orchard or nursery stock or treat it with a proper remedy.

(2) If an owner fails to pay the cost of the removal, treatment, or destruction within 30 days after notice has been mailed to the owner at his last known post-office address *and to any purchaser of the property under contract for deed at his last known post-office address*, the cost shall become a lien on the land of the owner and shall be added by the county treasurer to the taxes upon the property and collected as other taxes."

Section 23. Section 80-7-206, MCA, is amended to read:

"80-7-206. Expenses of eradicating orchard diseases — collection as tax. (1) When, under the direction or rules of the department, any money is spent by it to eradicate any disease or insect pest from an orchard or other place where fruits are grown or kept, the department shall notify the owner of the orchard or premises *and any purchaser of the property under contract for deed* in writing of the amount spent plus an additional charge of 25% of the amount spent. The notice shall be mailed to the last known address of the owner *or purchaser under contract for deed.*

(2) If the owner fails to pay the amount spent by the department plus the additional charge of 25% within 30 days of the time the notice is sent, the department shall file a verified statement with the county treasurer where the money was spent. The statement shall set forth the amount spent plus the additional charge of 25%, together with the correct description of the property on which the money was spent as it appears on the assessment roll of the county.

(3) The county treasurer shall add the amount contained in the statement to the taxes upon the property and shall collect them in the manner provided for collection of state and county taxes.

(4) The county treasurer in any county where any money is collected as provided in subsection (3) shall, on or before February 1 each year, remit the amount to the state treasurer, who shall deposit same to the credit of the general fund of the state."

Section 24. Section 82-2-224, MCA, is amended to read:

"82-2-224. Notice of condemnation — filing of plat. Any party seeking to condemn property for open-pit mining purposes shall serve notice in writing on all owners *and purchasers under contracts for deed* of property within 300 yards of the surface tract sought to be condemned or in lieu thereof shall file a plat showing the boundaries of the property sought to be condemned in the office of the county clerk and recorder, and the filing of said plat shall constitute notice to the owner or owners not personally served with written notice as herein provided."

Section 25. Section 82-4-222, MCA, is amended to read:

"82-4-222. Permit application. (1) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land

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and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record *and any purchasers under contracts for deed* of the surface of the area of land to be affected by the permit and the owners of record *and any purchasers under contracts for deed* of all surface area within one-half mile of any part of the affected area;

(c) the names and addresses of the present owners of record *and any purchasers under contracts for deed* of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this part and an identification of those permits;

(g) whether the applicant is in compliance with 82-4-251 and, if known, whether every officer, partner, director, or any individual owning of record or beneficially, alone or with associates, 10% or more of any class of stock of the applicant is subject to any of the provisions of 82-4-251 and he shall so certify and whether any of the foregoing parties or persons have ever had a strip-mining or underground-mining license or permit issued by any other state or federal agency revoked or have ever forfeited a strip-mining or underground-mining bond or a security deposited in lieu of a bond and, if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip- or underground-mining activities on behalf of the applicant;

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (Btu) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two copies each of two sets of geologic cross sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall

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depict subsurface conditions at such intervals as the department requires across the surface and shall run at a 90-degree angle to the other set. The department may not require intervals of less than 500 feet. Each cross section shall depict the thickness and geologic character of all known strata beginning with the topsoil. In addition, each application for an underground-mining permit shall be accompanied by cross sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit period. These cross sections shall also include all existing shafts, entries, and haulageways.

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant will prominently publish at least once a week for 4 successive weeks after submission of the application an announcement of his application for a strip-mining or underground-mining permit and a detailed description of the area of land to be affected should a permit be granted;

(l) a determination of the probable hydrologic consequences of coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface- and ground-water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas, so that cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability can be made. However, this determination is not required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit may not be approved until such information is available and is incorporated into the application.

(m) a coal conservation plan; and

(n) such other or further information as the department may require.

(2) The application for a permit shall be accompanied by two copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within 1,000 feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within 1,000 feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the proposed location of all facilities;

(j) show the location of test boring holes;

(k) show the surface location lines of any geologic cross sections which have been submitted;

(l) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs, and trees;

(m) be certified as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested.

(n) contain such other or further information as the department may require.

(3) If the department finds that the probable total annual production at all locations of any strip- or underground-coal-mining operation applied for will not exceed 100,000 tons, any determination of probable hydrologic consequences that the department requires and the statement of result of test borings or core samplings shall, upon written request of the operator, be performed by a qualified public or private laboratory designated by the department. The department shall assume the cost of the determination and statement to the extent that it has received funds for this purpose.

(4) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this part and rules adopted under this part. The reclamation plan shall address the life of the operation and indicate the size, sequence, and the timing of the subareas for which it is anticipated that individual permits will be sought.

(5) Each applicant for a coal mining permit shall submit as part of the application a certificate issued by an insurance company authorized to do business in the state certifying that the applicant has in force for the strip-

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or underground-mining and reclamation operations for which the permit is sought a public liability insurance policy, or evidence that the applicant has satisfied other state or federal self-insurance requirements. This policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of strip- or underground-coal-mining and reclamation operations, including use of explosives, and entitled to compensation under applicable provisions of state law. The permittee must maintain the policy in full force and effect during the term of the permit and any renewal until all reclamation operations have been completed.

(6) Each applicant for a strip-mining or underground-mining reclamation permit shall file a copy of his application for public inspection with the clerk and recorder at the courthouse of the county where the major portion of mining is proposed to occur."

Section 26. Section 82-4-239, MCA, is amended to read:

"**82-4-239. Reclamation by board.** (1) The board may have reclamation work done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons. The board may construct, operate, and maintain plants for the control and treatment of water pollution resulting from mine drainage.

(2) Any funds or any public works programs available to the board shall be used and expended to reclaim and rehabilitate lands that have been subjected to strip mining or underground mining that have not been reclaimed and rehabilitated in accordance with the standards of this part. The board shall cooperate with federal, state, and private agencies to engage in cooperative projects under this section.

(3) Agents, employees, or contractors of the department may enter upon any land for the purpose of conducting studies or exploratory work to determine whether such land has been strip- or underground-mined and not reclaimed and rehabilitated in accordance with the requirements of this part and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of any adverse effects of past coal-mining practices. Upon request of the commissioner, the attorney general shall bring an injunctive action to restrain any interference with the exercise of the right to enter and inspect granted in this subsection.

(4) If the department makes a finding of fact that:

(a) land or water resources have been adversely affected by past coal-mining practices; and

(b) the adverse effects are at a stage where in the public interest action to restore, reclaim, abate, control, or prevent should be taken; and

(c) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices are not known or readily available or the owners will not give permission for the department or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices;

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then agents, employees, or contractors of the department, after giving notice by mail to the owner, if known, *and any purchaser under contract for deed, if known,* or, if *neither is* known, by posting notice upon the premises and advertising in a newspaper of general circulation in the county in which the land lies, may enter upon property adversely affected by past coal-mining practices and any other property necessary for access to such mineral property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects of past coal-mining practices. This act is not an act of condemnation of property or of trespass but rather an exercise of the power granted by sections 1 and 2, Article IX of the Montana constitution.

(5) (a) Within 6 months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal-mining practices on privately owned land, the department shall itemize the money so expended and may file a statement thereof in the office of the clerk and recorder of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal-mining practices if the money so expended shall result in a significant increase in property value. Such statement constitutes a lien upon the land. The lien may not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. No lien may be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed under this part.

(b) The landowner may petition within 60 days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices. The amount reported to be the increase in value of the premises constitutes the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by law.

(c) The lien provided in this section shall be recorded at the office of the county clerk and recorder. The statement constitutes a lien upon the land as of the date of the expenditure of the money and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

(6) The board may acquire the necessary property by gift or purchase or, if the property cannot be acquired by gift or purchase at a reasonable cost, proceedings may be instituted in the manner provided in Title 70, chapter 30, against all nonaccepting landholders if:

(a) the property is necessary for successful reclamation;

(b) the acquired land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal-mining practices will serve recreation and historic purposes or conservation and reclamation purposes or provide open space benefits; and

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(c) permanent facilities such as treatment plants or relocated stream channels will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past strip- or underground-coal-mining practices; or acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this part in that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices."

Section 27. Section 82-10-503, MCA, is amended to read:

"**82-10-503. Notice of drilling operations.** In addition to the requirements for geophysical exploration activities governed by Title 82, chapter 1, part 1, the oil and gas developer or operator shall give the surface owner *and any purchaser under contract for deed* written notice of the drilling operations that he plans to undertake. This notice shall be given to the record surface owner *and any purchaser under contract for deed* at *their addresses* as shown by the records of the county clerk and recorder at the time the notice is given. This notice shall sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property."

Section 28. Section 85-2-232, MCA, is amended to read:

"**85-2-232. Availability of preliminary decree.** (1) The water judge shall send a copy of the preliminary decree to the department, and the water judge shall serve by mail a notice of availability of the preliminary decree to each person who has filed a claim of existing right *and to the purchaser under contract for deed, as defined in [section 1], of property in connection with which a claim of existing right has been filed*, or, in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been denied a beneficial water use permit pursuant to Title 85, chapter 2, part 3, those granted a reservation pursuant to 85-2-316, or other interested persons who request service of the notice from the water judge. The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(2) Any person may obtain a copy of the preliminary decree upon payment of a fee of $20 or the cost of printing, whichever is greater, to the water judge."

Section 29. Section 85-2-307, MCA, is amended to read:

"**85-2-307. Notice of application.** (1) *(a)* Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for 3 consecutive weeks.

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(b) Before the last date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in [section 1], of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 30 days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 30. Section 85-15-202, MCA, is amended to read:

"85-15-202. Examination and report — subsequent actions. (1) It is the duty of the persons so appointed to make a thorough examination of the dam or reservoir. If, upon examination, they find that persons or property are endangered by reason of the dam or reservoir and it is not secure against the pressure of the water confined therein or the water that may be confined therein or against rains and freshets that may occur and if they find that the same is secure against the occurrence of the casualties mentioned or any of them, they must make a report in writing to the judge, which must be entered of record as a proceeding in court.

(2) If, upon such examination as to the safety of such reservoir, they consider such reservoir insufficient and insecure, they must further inquire whether the danger to be apprehended is imminent, and if they are of the opinion that such danger is imminent and that destruction of life or property may result from delay, it is their duty forthwith to draw from such reservoir the waters therein or so much thereof as will insure safety, and they must make return of their action to the judge. In the discharge of such duties, the persons so acting are peace officers.

(3) If, upon examination, they are of opinion that such dam or reservoir is insecure and insufficient but that the danger therefrom is not immediate or imminent, they must so state in their report to the judge. The judge must thereupon cause a copy of the report to be served on the

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owner *of the property, the* person in charge thereof, *and any purchaser of the property under contract for deed,* with a notice requiring him to make the same secure or to draw the water therefrom without delay. Unless such order is complied with after hearing, the judge may order the sheriff to draw from said dam or reservoir the waters thereof."

Approved April 15, 1983.

CHAPTER NO. 527

AN ACT REDUCING THE NUMBER OF YEARS A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM MUST SERVE BEFORE BEING ELIGIBLE FOR RETIREMENT BENEFITS, REGARDLESS OF HIS AGE; INCREASING THE EMPLOYEE AND EMPLOYER CONTRIBUTION RATES; AMENDING SECTIONS 19-4-602, 19-4-605, 19-4-801, AND 19-4-802, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-602, MCA, is amended to read:

"19-4-602. Annuity savings fund — member's contribution. The annuity savings fund is a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner:

(1) Each employer shall deduct from the compensation of each active member on the payroll for each payroll period on and subsequent to the date on which the member became a member an amount equal to *7.044%* of the member's earned compensation.

(2) The deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims whatsoever for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(3) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to any accumulated contributions which he has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

(4) The accumulated contributions of a member withdrawn by him or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund. Upon the retirement of a

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member, his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund."

Section 2. Section 19-4-605, MCA, is amended to read:

"19-4-605. Pension accumulation fund — employer's contribution. The pension accumulation fund is the fund in which the reserves for payment of pensions and annuities shall be accumulated and from which pensions, annuities, and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to *7.320%* of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund shall be transferred to that fund from the pension accumulation fund.

(6) All pensions, annuities, and benefits in lieu thereof shall be paid from the pension accumulation fund.

(7) The retirement board may, in its discretion, transfer from the pension accumulation fund an amount necessary to cover expenses of administration."

Section 3. Section 19-4-801, MCA, is amended to read:

"19-4-801. Eligibility for superannuation retirement. A member who has at least 5 full years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 60 or has been credited with full-time or part-time service in *25* or more years may retire from service if he files with the retirement board his written application setting forth the fact of his retirement."

Section 4. Section 19-4-802, MCA, is amended to read:

"19-4-802. Early retirement. (1) A member who has at least 5 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 50 may retire from service and

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be eligible for an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement.

(2) The early retirement allowance shall be determined as prescribed in 19-4-804(1) and section 5, Chapter 549, Laws of 1981, with the exception that the allowance will be reduced as follows:

(a) by ½ of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 25 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 25 years of creditable service."

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved April 15, 1983.

CHAPTER NO. 528

AN ACT TO PROVIDE ADDITIONAL DEDUCTIONS ON THE NET PROCEEDS OF MINES APPLICABLE TO NONMETALLIC MINES AND MINING CLAIMS; AMENDING SECTIONS 15-23-502 AND 15-23-503, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-502, MCA, is amended to read:

"15-23-502. Net proceeds tax — statement of yield. Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by such person during the year preceding January 1 of the year in which such statement is made. Such statement shall be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Such statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts

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paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of such ores, mineral products, or deposits and the yield of such ores, mineral products, or deposits from such mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to such person so engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of same into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which such return is made;

(12) cost of fire insurance, workers' compensation insurance, *boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;*

(13) cost of welfare and retirement fund payments provided for in wage contracts; and

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any such services beyond the stage of reduction and beneficiation of the minerals."

Section 2. Section 15-23-503, MCA, is amended to read:

"15-23-503. Net proceeds — how computed. (1) The department of revenue shall calculate from the returns the gross product yielded from such mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person engaged in mining. Net proceeds shall be determined by subtracting from the value of the gross product thereof the following:

(a) all royalty paid or apportioned in cash or in kind by the person so engaged in mining;

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(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as hereinafter provided;

(d) all moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of such milling and reduction works for the calendar year for which such return is made;

(f) all moneys actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals therefrom and for marketing the product and the conversion of the same into money;

(g) all moneys expended for insurance and welfare and retirement *costs reported in the statement required in 15-23-502;*

(h) all moneys expended for necessary labor, equipment, and supplies for testing minerals extracted to satisfy federal or state health and safety laws or regulations, for plant security in Montana, for assaying and sampling the extracted minerals, and for engineering and geological services conducted in Montana for existing mining operations but not including any such services beyond the stage of reduction and beneficiation of the minerals.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of such cost each year for a period of 10 years.

(3) No moneys invested in mines or improvements may be allowed as a deduction unless all machinery, equipment, and buildings represented by such moneys are returned to the county in which such mine is located for assessment purposes at the level of assessment of all other property in such county.

(4) No moneys invested in the mines and improvements during any year except the year for which such statement is made and except as provided in this section may be included in such expenditures, and such expenditures may not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the mine or superintending the management thereof."

Section 3. **Applicability date.** This act is applicable to taxable periods beginning after December 31, 1982.

Approved April 15, 1983.

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CHAPTER NO. 529

AN ACT PROVIDING LIMITATIONS ON THE AMOUNT OF MONETARY CONTRIBUTIONS A CANDIDATE FOR THE STATE SENATE OR STATE HOUSE OF REPRESENTATIVES MAY RECEIVE FROM POLITICAL COMMITTEES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Limitations on receipts from political committees.** A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to his campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to his campaign. The foregoing limitations shall be multiplied by the inflation factor as defined in 15-30-101(8) for the year in which general elections are held after 1984; the resulting figure shall be rounded off to the nearest $50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions may not be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 13, chapter 37, part 2, and the provisions of Title 13, chapter 37, part 2, apply to section 1.

Approved April 15, 1983.

CHAPTER NO. 530

AN ACT TO REVISE THE LAWS RELATING TO IMMUNIZATION AND INDEMNIFICATION OF GOVERNMENTAL EMPLOYEES; AMENDING SECTION 2-9-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-305, MCA, is amended to read:

"2-9-305. Governmental entity to be joined as defendant — immunization, defense, and indemnification of employees. (1) It is the purpose of this section to provide for the immunization, *defense,* and indemnification of public officers and employees *civilly* sued for their actions taken within the course and scope of their employment.

(2) In *any noncriminal* action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, *including alleged violations of civil rights pursuant to 42*

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U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of *the employee's* office or employment, the governmental entity employer, *except as provided in subsection (6)* shall *defend the action on behalf of the employee and indemnify the employee.*

(3) *Upon receiving service of a summons and complaint in a noncriminal action against him, the employee shall give written notice to his supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee having no supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.*

(4) In any *noncriminal* action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the employer for any money judgments or legal expenses, *including attorney fees either incurred by the employee or awarded to the claimant, or both,* to which *the employee* may be subject as a result of the suit unless the *employee's* conduct *falls within the exclusions provided in subsection (6).*

(5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of subsection (6).

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

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(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If no judicial determination has been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the employer had no obligation to defend the employee. The governmental entity employer has no obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 15, 1983.

CHAPTER NO. 531

AN ACT TO PROHIBIT DISCRIMINATION ON THE BASIS OF SEX OR MARITAL STATUS IN THE ISSUANCE OR OPERATION OF INSURANCE POLICIES AND RETIREMENT PLANS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY CLAUSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Discrimination in insurance and retirement plans.** It is an unlawful discriminatory practice for any financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 49, chapter 2, part 3, and the provisions of Title 49 apply to section 1.

Section 3. **Applicability.** This act does not apply to any insurance policy, plan, coverage, or any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

Section 4. **Effective date.** This act is effective October 1, 1985.

Approved April 15, 1983.

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CHAPTER NO. 532

AN ACT AMENDING SECTION 46-18-222, MCA, TO PROVIDE THAT A VOLUNTARILY INDUCED INTOXICATED OR DRUGGED CONDITION MAY NOT BE CONSIDERED AN IMPAIRMENT TO A DEFENDANT'S MENTAL CAPACITY FOR THE PURPOSE OF PROVIDING AN EXCEPTION TO MANDATORY SENTENCES OR RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3), (4), and (5) of 46-18-201, 46-18-221(3), and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. *However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection;*

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense."

Approved April 15, 1983.

CHAPTER NO. 533

AN ACT TO DEFINE A CORRECTIONAL POLICY FOR THE STATE OF MONTANA; AMENDING SECTION 46-18-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-101, MCA, is amended to read:

"46-18-101. Correction policy. *(1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the*

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punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for his actions. Corrections laws and programs must be implemented to impress upon each individual his responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed; and

(iv) the criminal history of the offender.

(b) Dangerous offenders *who habitually violate the law and victimize the public* shall be *removed from society and* correctively treated in custody for long terms as needed. *Other* offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. *Whenever possible, sentences for offenders shall include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.*"

Approved April 15, 1983.

CHAPTER NO. 534

AN ACT TO ALLOW A FISH AND WILDLIFE LICENSING AGENT TO POST SECURITY OTHER THAN A SURETY BOND IN ACCORDANCE WITH DEPARTMENT RULES; AND TO REQUIRE LICENSE AGENTS TO PAY INTEREST ON LICENSE REVENUE THAT IS REMITTED LATE; AMENDING SECTIONS 87-2-902 AND 87-2-903, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-902, MCA, is amended to read:

"**87-2-902. Bond or security of agent and preferred claim of state for license money.** (1) An appointed license agent shall furnish

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a corporate surety bond *or other security as required by department rule.* The bond shall secure the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all money received from the sale of hunting and fishing licenses and any permits or certificates prescribed by the department. The license agent shall properly account for all unsold licenses, permits, and certificates annually on April 1 or at any other time at the request of the director.

(2) All money received for the sale of licenses, permits, and certificates at all times belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all money owed the state."

Section 2. Section 87-2-903, MCA, is amended to read:

"87-2-903. Compensation and duties of agents — penalty for late submission of license money. (1) License agents, except salaried employees of the department, shall receive for all services rendered the sum of 30 cents for each license, permit, or certificate issued. *Each* license agent shall submit to the department all duplicates of each class of licenses sold and shall accompany the duplicate licenses with all moneys received for the sale of the licenses less a fee of 30 cents for each license sold. *The department may designate classes of license agents and may establish a deadline for submission of license money by each class of agent.* Each license agent shall keep his license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(2) For purposes of this section, the term "license" includes any license, permit, and certificate prescribed by the department.

(3) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate fee, by the deadline established by the department, an interest charge equal to the rate charged on late corporation license tax payments under 15-31-502 must be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904."

Section 3. **Effective date.** This act is effective March 1, 1984.

Approved April 15, 1983.

CHAPTER NO. 535

AN ACT TO PROVIDE FOR INVESTMENT BY BANKS OF 50 PERCENT OF THEIR UNIMPAIRED CAPITAL AND SURPLUS IN BONDS THAT ARE NOT GENERAL OBLIGATION BONDS OF THE UNITED STATES OR A POLITICAL SUBDIVISION OF THE STATE OF MONTANA; AMENDING SECTION 32-1-433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-433, MCA, is amended to read:

"32-1-433. Limit on amount of bond issue. No commercial bank may purchase, agree to purchase, or underwrite any bond issue in excess

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of *50%* of its *unimpaired capital and surplus*, except *general obligation* bonds of the United States, of the state of Montana, or of the cities, towns, counties, or school districts of this state."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1983.

CHAPTER NO. 536

AN ACT TO GENERALLY REVISE, EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS; DELETING THE CRIMINAL PENALTY RELATING TO EXPENDITURES IN EXCESS OF APPROPRIATIONS; AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND 17-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(3) "Approving authority" means the governor or his designated representative for executive branch agencies; the chief justice of the supreme court or his designated representative for judicial branch agencies; appropriate legislative committees or a designated representative for legislative branch agencies; or the board of regents or its designated representative for the university system.

(4) "Budget amendment" means a legislative appropriation to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund contingent on total compliance with all budget amendment procedures.

(5) "Emergency" means any catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time an agency's appropriation was made, which was clearly not within the contemplation of the legislature and the governor, and which seriously affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

(6) "Executive branch approving authority" means the governor or his designated representative.

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(7) "Necessary" means essential to the public welfare and of a nature which cannot wait until the next legislative session for legislative consideration.

(8) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(9) "University system unit" means the board of regents, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural experiment station with central offices at Bozeman, the forestry and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, or the bureau of mines and geology with central offices at Butte.

Section 2. **Budget amendment requirements.** (1) No budget amendment may be approved:

(a) by the approving authority, except a budget amendment to spend funds which were not available for legislative consideration;

(b) by the approving authority, which contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state special revenue fund unless an emergency justifies such expenditure;

(d) by the approving authority, unless it will provide additional services;

(e) by the approving authority, for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments shall itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted by the approving authority to the budget director and the office of the legislative fiscal analyst.

Section 3. **Budget amendment certification.** In approving a budget amendment, the approving authority shall make the following certifications and in addition shall provide all other information required below as an integral part of the certification:

(1) The approving authority shall certify that:

(a) specific additional services will be provided as a result of the expenditures to be permitted under this budget amendment and shall also list each specific service to be so provided;

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(b) the specific services to be provided under this budget amendment are necessary;

(c) the agency requesting this budget amendment has no other reasonable alternative available to provide the additional services. Such certification shall specifically include determinations by the approving authority that the agency cannot provide all or specific parts or amounts of the additional services with existing personnel because of the present required workload of existing personnel, or that the agency is unable within its existing funding to fund all or part of such additional services from any source lawfully available to it.

(d) the budget amendment makes no ascertainable present or future significant commitment for increased general fund support.

(2) The approving authority shall include in its certification the specific criteria by which the effectiveness of the additional services will be evaluated and shall state a specific follow up date on which the written evaluation of such services, using the listed criteria, will be presented to the legislative fiscal analyst. The written evaluation must be presented to the legislative fiscal analyst on or before that date.

(3) For budget amendments to spend money in the state special revenue fund, the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became aware of the emergency.

Section 4. **Executive branch budget amendment procedures.** (1) Upon receiving a proposed budget amendment from a requesting agency, the executive branch approving authority shall immediately forward a copy of the entire budget amendment to the legislative fiscal analyst.

(2) If the executive branch approving authority denies the request for a budget amendment, he shall immediately forward a notice of denial to the legislative fiscal analyst.

(3) If the executive branch approving authority intends to make certification of the budget amendment, immediately upon his completion of the certification he shall forward the certification and all supporting documentation to the legislative fiscal analyst. The executive branch approving authority may not approve the budget amendment until he receives the legislative finance committee's written report for that budget amendment unless:

(a) the report is not received within 90 calendar days from the date the certification and supporting documentation were forwarded to the finance committee, in which case the approving authority may approve the budget amendment; or

(b) there has been a waiver of review and report as provided in subsection (6).

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(4) The legislative fiscal analyst shall review each proposed budget amendment that has been certified by the executive branch approving authority for compliance with statutory budget amendment requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the budget amendment, the legislative fiscal analyst shall submit the committee's report to the executive branch approving authority.

(5) Upon receipt of the legislative finance committee's written report, the executive branch approving authority may approve or deny the budget amendment or may return the budget amendment to the requesting agency for further information. If the executive branch approving authority has returned the budget amendment to the requesting agency and the requesting agency resubmits the budget amendment to the executive branch approving authority, all procedures set out in this section apply to the resubmitted budget amendment.

(6) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive his written review and the legislative finance committee's written report required by this section. Upon receipt of such waiver, the executive branch approving authority may approve the budget amendment on completion of his certification. Such a waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the budget amendment, and all other budget amendment requirements and standards remain in effect. After such a waiver, the legislative fiscal analyst may complete the written review.

(7) Nothing in [sections 1 through 5] confers any authority on the legislative finance committee to approve or deny budget amendments.

Section 5. **Voidness of improperly certified budget amendments.** Any budget amendment that is not certified by the approving authority according to the standards and procedures set out in [sections 1 through 5] may be declared void in its entirety by a court of competent jurisdiction on complaint of the attorney general, the legislature, or the legislative finance committee. No funds may be expended under an improperly certified budget amendment.

Section 6. Section 5-12-401, MCA, is amended to read:

"5-12-401. Submission of budget amendments to committee. All budget amendments for state agencies must be submitted through the budget director to the *legislative finance* committee *as soon as received by the budget director.* No state agency shall expend in excess of *its legislative* appropriation, *which includes* a *lawfully approved and valid* budget amendment."

Section 7. Section 5-12-402, MCA, is amended to read:

"5-12-402. Review by legislative fiscal analyst. The legislative fiscal analyst shall review proposed *or approved* budget amendments and *shall* make recommendations to the committee concerning proposed *or approved* budget amendments."

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Section 8. Section 17-8-103, MCA, is amended to read:

"17-8-103. Expenditures in excess of appropriation unlawful. (1) It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state or any officer, department, board, commission, or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the legislative appropriation, *including any approved,* authorized, *and valid* budget amendment, provided for such year or for any supervisory board or authority either directly or indirectly to authorize, direct, or order any such institution, officer, department, board, commission, or bureau to increase any expenditures, except as specifically provided by law.

(2) It shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions, and bureaus to keep such expenditures, obligations, and liabilities within the amount of such legislative appropriation, *which includes an approved,* authorized, *and valid* budget amendment."

Section 9. Section 17-8-104, MCA, is amended to read:

"17-8-104. Civil penalties and remedies for violation. *(1) (a)* Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103 is personally liable and the surety or sureties on his bond shall also be liable to the state for the amount of the excess thus unlawfully expended. *An action under this subsection (a) may be brought upon complaint of the attorney general, of the legislature by joint resolution, of the legislative finance committee, or of any taxpayer filed in a district court of this state.*

(b) Any authority or member of a board of trustees or any person, officer, or employee violating the provisions of 17-8-103 is guilty of misfeasance in office and shall be guilty of wrongdoing and shall be subject to removal from office or from such employment. *An action under this subsection (b) may be brought* upon complaint of the attorney general, *the legislature by joint resolution,* or any taxpayer, filed in a district court of this state.

(2) Complaints under subsections (1)(a) and (1)(b) may be combined in a single action.

(3) Remedies and penalties provided by this section may be pursued singly or in any combination."

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Effective date.** This act is effective July 1, 1983.

Approved April 15, 1983.

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CHAPTER NO. 537

AN ACT CREATING A PUBLICLY OWNED GOLF COURSE BEER AND WINE LICENSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Publicly owned golf course beer and wine license.** (1) Upon application, the department of revenue shall issue a retail beer and wine license, to be known as a publicly owned golf course beer and wine license, for use at a publicly owned golf course.

(2) The application must be made by the local government owning and operating the public golf course. The local government may lease the license for use at the golf course to an individual or entity approved by the department.

(3) A publicly owned golf course beer and wine license and all retail beer and wine sales thereunder are subject to all statutes and rules governing a retail beer license with a wine license amendment.

(4) The department of revenue shall issue a publicly owned golf course beer and wine license to a qualified applicant regardless of the number of beer and wine licenses already issued within the beer and wine license quota area in which the golf course is situated. A license issued pursuant to this section is nontransferable.

Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 16, chapter 4, part 1, and the provisions of Title 16, chapters 1 through 6, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1983.

CHAPTER NO. 538

AN ACT TO INCREASE FROM 5 TO 10 THE NUMBER OF MEMBERS OF THE PUBLIC SERVICE COMMISSION PERSONAL STAFF THAT ARE EXEMPT FROM CERTAIN PROVISIONS OF THE STATE EMPLOYEE CLASSIFICATION AND PAY PLAN; AMENDING SECTION 2-18-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-104, MCA, is amended to read:

"2-18-104. Exemption for personal staff — limit. (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are

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exempt from the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed *10*."

Approved April 15, 1983.

CHAPTER NO. 539

THE AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN STANDARDS ACT; GENERALLY REVISING THE STATUTES RELATING TO THE WAREHOUSING OF AND DEALING IN AGRICULTURAL COMMODITIES; AMENDING SECTIONS 80-5-201 THROUGH 80-5-203, MCA; REPEALING SECTIONS 80-3-501 THROUGH 80-3-513, 80-4-101 THROUGH 80-4-106, 80-4-111 THROUGH 80-4-126, 80-4-201 THROUGH 80-4-209, 80-4-221 THROUGH 80-4-234, AND 80-4-311 THROUGH 80-4-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the existing statutes regulating certain aspects of the agricultural industry have become antiquated, as well as being contradictory and illogical in their organization.

THEREFORE, it is necessary to extensively revise those statutes and adopt them as new sections.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 71] may be cited as the "Agricultural Warehouse, Commodity Dealer, and Grain Standards Act".

Section 2. **Definitions.** As used in [sections 1 through 71], the following definitions apply:

(1) "Agent" means any person who contracts for or solicits any agricultural commodities from a producer or warehouseman or negotiates the consignment or purchase of any agricultural commodity on behalf of any commodity dealer.

(2) "Agricultural commodity" means any grain, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed, and other agricultural commodities designated by rule of the department.

(3) "Commodity dealer" means any person who engages in a business involving or, as part of his business, participates in buying, exchanging,

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negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(b) a person who buys or handles less than $10,000 worth of agricultural commodities in a licensing year;

(c) a person who is the producer of agricultural commodities that he actually plants, nurtures, and harvests; or

(d) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange.

(4) "Credit sale contract" means a contract for the sale of an agricultural commodity when the sale price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, or price-later contracts.

(5) "Department" means the department of agriculture provided for in 2-15-3001.

(6) "Depositor" means any person who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment or who is the owner or legal holder of an outstanding warehouse receipt or who is lawfully entitled to possession of the agricultural commodity.

(7) "Director" means the director of the department of agriculture.

(8) "Grain" means all grains for which standards have been established under the United States Grain Standards Act (7 U.S.C. sections 71 through 87) and all other agricultural commodities, such as mustard, oil seed crops, or other crops which may be designated by rule of the department.

(9) "Grain Standards Act" means the United States Grain Standards Act (7 U.S.C. sections 71 through 87) as that act reads on [the effective date of this act].

(10) "Inspector" means any person so designated by the director to assist in the administration of [sections 1 through 54]. The term includes warehouse auditors or examiners.

(11) "Official grain inspectors" means any official personnel who perform or supervise the performance of official inspection services and certify the results thereof, including the grade of the grain.

(12) "Official grain samplers" or "samplers" means any official personnel who perform or supervise the performance of official sampling services and certify the results thereof.

(13) "Official grain standards" means the standards of quality and condition of grain that establish the grades defined by the Grain Standards Act.

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(14) "Official grain weighers" means any official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results thereof, including the weight of the grain.

(15) "Person" means any individual, firm, association, corporation, partnership, or any other form of business enterprise.

(16) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(17) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities which commingle commodities belonging to different lots of agricultural commodities.

(18) "Receipt" means a warehouse receipt.

(19) "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouseman licensed under the provisions of [sections 22 through 46] upon initial delivery of the agricultural commodity to the warehouse.

(20) "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

(21) "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(22) "Terminal grain warehouse" means any warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(23) "Warehouseman" means a person operating or controlling a public warehouse.

(24) "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under [sections 22 through 46] by a warehouseman, except scale weight tickets.

Section 3. **Rules — adoption.** The department shall adopt such rules as it determines necessary for the efficient execution of the provisions of [sections 1 through 71].

Section 4. **Terms of licenses — renewals.** Each license issued or renewed under [sections 22 through 54] shall be issued for a period to be prescribed by rule of the department.

Section 5. **Maximum bond amount.** The maximum amount of any public warehouseman bond may not exceed $1 million and the maximum amount of a commodity dealer bond may not exceed $1 million, except:

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(1) any bonds compensating for net asset deficiencies prescribed in [sections 22 through 54] must be added to the maximum bond amount; and

(2) the maximum bond amount must be adjusted each year based upon the percentage increase or decrease in the annual average index of prices received by Montana farmers for food and feed grains as computed by the Montana crop and livestock reporting service.

Section 6. **Appointment by nonresident licensee of agent to receive process.** A nonresident applying for a license under this chapter shall file a written power of attorney, designating the secretary of state as his agent upon whom service of process may be had if legal action is brought against the nonresident. A nonresident who has a duly appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as his agent for service of process. The department must be furnished a copy of the designation of the resident agent, which copy shall be certified by the secretary of state.

Section 7. **Reports to the department.** Each person licensed under [sections 22 through 54] shall report to the department at intervals set by rule of the department on forms prepared by it. The reports must show the total weight of each kind of agricultural commodity received and shipped, the amount of outstanding warehouse receipts on that date, and a statement of the amount of agricultural commodities on hand to cover the outstanding warehouse receipts. The department may also, by rule, require special reports at any time.

Section 8. **Examination of books.** The department is authorized, through its officials, employees, or designated agents, to examine or copy all books, records, papers, and accounts of persons licensed under [sections 22 through 54].

Section 9. **Confidentiality of records.** All financial statements of warehousemen and commodity dealers required under the provisions of [sections 22 through 54] shall be kept confidential by the department and are not subject to disclosure except:

(1) upon written permission of the licensee;

(2) in actions or administrative proceedings commenced under the provisions of [sections 1 through 54];

(3) when required by subpoena or court order;

(4) when disclosed to law enforcement agencies in connection with the investigation or prosecution of criminal offenses; or

(5) when released to a bonding company approved by the department.

Section 10. **Publication of reports.** The department may publish the results of any investigation made. It may publish the names and addresses of persons licensed under [sections 22 through 54], and it may also publish a list of all licenses terminated under [sections 22 through 54] and the causes therefor.

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Section 11. **Employment of assistants.** The department is authorized to employ qualified persons not regularly in the service of the state for temporary assistance in carrying out the provisions of [sections through 71].

Section 12. **License suspension and revocation — renewal.** (1) The department may revoke, suspend, or modify a license when it has reasonable cause to believe that the licensee has committed any of the following acts, each of which is a violation of [sections 22 through 54]:

(a) failure to maintain all initial licensing requirements, including insurance, bonding, and net asset requirements. In determining compliance with net asset requirements, the department may consider the licensee's status under any prior or current bankruptcy proceedings, as well as any outstanding civil settlements or judgments.

(b) aiding or abetting another person in the violation of the licensure or any other provisions of [sections 22 through 54];

(c) conviction of any criminal offense defined under Title 45;

(d) failure or refusal to allow inspection or maintain and provide records, reports, and other information required by the department;

(e) failure or refusal to post storage and other charges as filed with the department;

(f) failure or refusal to accept agricultural commodities for storage as required under [section 31];

(g) failure to comply with the warehouse receipt and scale weight ticket requirements of [sections 32 and 34];

(h) failure of a warehouseman to maintain and deliver upon request sufficient agricultural commodities to cover outstanding warehouse receipts as required under [section 38];

(i) discrimination in charges by a warehouseman as provided in [section 31];

(j) failure to provide payment for any agricultural commodity; or

(k) violation of or failure or refusal to comply with any other provision of [sections 1 through 54] or rule adopted by the department.

(2) The department may refuse to issue or renew a license if the applicant or licensee:

(a) has a license as a warehouseman or commodity dealer that was previously or is currently suspended or revoked. In determining the sufficiency of cause hereunder, the department shall consider the nature and length of the action and any subsequent licensure or other evidence of rehabilitation.

(b) does not satisfy the bonding, insurance, or net asset requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

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(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant which the department subsequently determines incorrect must be considered void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631.

Section 13. **Credit sale contracts.** (1) A commodity dealer who purchases agricultural commodities by credit sale contract shall maintain books, records, and other documents as required by the department to establish compliance with the provisions of this section.

(2) In addition to other required information, a credit sale contract must contain or provide for all of the following:

(a) the seller's name and address;

(b) the conditions of delivery;

(c) the amount and kind of agricultural commodities delivered;

(d) the price per unit or basis of value; and

(e) the date payment is to be made.

(3) Title to all agricultural commodities sold by credit sale contract is in the purchaser as of the time the contract is executed unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the commodity dealer, and one copy shall be delivered to the seller. Upon revocation, suspension, or termination of a warehouseman's license, the department may advance the payment date for all credit sale contracts to a date not later than 30 days following the effective date of the revocation, suspension, or termination. When not otherwise provided, the purchase price for all agricultural commodities shall be determined as of the effective date of revocation, suspension, or termination in accordance with all other provisions of the contract. However, if the business of the commodity dealer is sold to another licensed commodity dealer, credit sale contracts may be assigned to the purchasing commodity dealer.

Section 14. **Delivery of agricultural commodities containing toxic chemicals to warehouse or to commodity dealer unlawful.** It is unlawful for any person to deliver to any warehouse or commodity dealer an agricultural commodity in bulk if the commodity contains toxic chemicals if the person knew or upon the exercise of reasonable diligence should have known of the presence of the toxic chemicals in the commodity.

Section 15. **Director's authority — investigative hearing.** The director may upon his own motion, whenever he has reason to believe a

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violation has occurred or upon verified complaint of any person in writing, investigate the actions of any person and, if he finds probable cause, shall notify the person that he must appear for an investigative hearing before the director 20 days from receipt of written notice.

Section 16. **Action on bond by persons injured.** (1) A person injured by the breach of an obligation for which a bond is given to the department may take action against the bond in his own name to recover damages caused by the breach. The director shall then make demand upon the warehouseman or the commodity dealer and his surety for payment of damages. If the damages are not promptly paid, the director shall commence an action on the bond to enforce payment of damages.

(2) Liability of the surety upon the bond is limited to the amount of the bond. However, if two or more persons are injured by breach of the obligation for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond shall be prorated by the surety among all of those injured.

Section 17. **Duty to prosecute.** A county attorney who has appropriate jurisdiction and to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecute without delay in a court of competent jurisdiction.

Section 18. **Injunction.** If a person without a license is found to have engaged in any business for which a license is required under [sections 22 through 54], the court shall enjoin him from further business until he has been duly licensed. It is not necessary that the department show that an individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief is the same as any other action for an injunction under Title 27. The injunction provided by this section is an additional remedy to the criminal penalty provided for in [section 20].

Section 19. **Penalty for operating without a license — misrepresentation.** (1) A person acting as a warehouseman or a commodity dealer without a license or in any way representing by action or words that he is a warehouseman or a commodity dealer and is not so licensed violates the provisions of [sections 22 through 54], is guilty of a felony, and is punishable by imprisonment for not more than 10 years or by a fine of not more than $10,000, or both.

(2) A person who issues or aids in the issuance of a fraudulent receipt for any commodity is guilty of a felony and is punishable by imprisonment for not more than 10 years or by a fine of not more than $10,000, or both.

(3) A person who knowingly submits false information to or who knowingly withholds information from the department when that information is required to be submitted is guilty of a felony.

Section 20. **Penalty.** (1) Except as otherwise provided, any person who violates any provision of [sections 1 through 54] or rules promulgated thereunder or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or his duly authorized representative in the performance of his duty under [sections 1 through 54] is guilty of a

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misdemeanor and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than $1,000, or both.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by [sections 1 through 71] or who uses a scale weight ticket or credit sale contract that fails to satisfy the requirements of [sections 1 through 71] is guilty of a misdemeanor.

Section 21. **Director's enforcement action.** Nothing in [sections 1 through 71] may be construed to require the director or his authorized representative to report for prosecution or for the institution of civil action a violation if he believes that the public interest will best be served by a suitable warning.

Section 22. **License necessary to operate public warehouse.** (1) No person may act as a warehouseman without first having obtained an annual license from the department. This requirement does not apply to operators of warehouses that are federally licensed under the "United States Warehouse Act".

(2) If a warehouseman operates two or more warehouses in the same city or immediately adjacent thereto or in the same immediate area, in conjunction with each other and with the same work force, and where one set of books and records are kept for all such warehouses and cash slips, scale weight tickets, warehouse receipts, and checks of one series are used for agricultural commodities stored therein, only one warehouseman's license is required for the operation of all such warehouses.

Section 23. **Licenses to warehouseman — issuance — renewal — conditions precedent.** (1) The department is authorized to issue or renew, upon application, a license to any warehouseman for the conduct of a warehouse or warehouses in accordance with [sections 22 through 54], provided the following conditions are met:

(a) Each applicant shall file and maintain satisfactory evidence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that are stored in the warehouse, including agricultural commodities owned by the warehouseman. The insurance shall insure the commodities for the full market value at the time of loss of such commodities against loss by fire, internal explosion, lightning, or tornado.

(b) Each warehouse must be found suitable for the proper storage of the particular agricultural commodity stored therein.

(c) A license fee must be submitted to the department as prescribed by [section 24].

(d) A current drawing of the warehouse, showing storage facilities and capacity of the warehouse, must be submitted to the department.

(e) A sufficient and valid bond must be filed and maintained as required by [sections 25 and 26].

(f) The applicant has submitted to the department a current financial statement prepared by a licensed accountant according to generally

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accepted accounting principles, showing that the applicant has and does maintain current assets equal to or greater than current liabilities.

(g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department for approval and filing.

(h) The applicant must have complied with the terms of [sections 22 through 46] and the rules prescribed thereunder.

(2) All documents required for renewal of a license must be received by the department prior to the expiration date of the warehouse license. An expired warehouse license may be reinstated by the department upon receipt of all required licensing documents and a penalty fee of $50 if the documents are filed within 30 days from the date of expiration of the warehouse license. All license applications received after the 30-day penalty period must be considered original applications and an initial license fee must be assessed according to [section 24].

Section 24. **Fees of department.** (1) The department shall collect an annual warehouseman license fee, based on the number of warehouses owned by the warehouseman, according to the following schedule:

For each warehouse listed in the application:

Capacity in Hundredweight	Rate
0 to 25,000	$ 25
25,001 to 50,000	50
50,001 to 125,000	75
125,001 to 250,000	100
250,001 to 375,000	125
over 375,000	150

(2) The department shall collect a fee of $50 for each initial licensing inspection of a warehouse or station.

(3) The department shall collect a fee of $25 for each amendment of a license.

(4) The department shall collect a fee of $150 a day or fraction thereof for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

(5) All fees must be deposited into the state treasury and credited to the general fund account.

Section 25. **Bond of applicant for license — additional bond — additional obligations.** (1) Each applicant for a warehouseman's license shall file a bond with the department. The bond must be in such form and must contain such terms and conditions as the department may prescribe by rule to carry out the purpose of [sections 25 and 26].

(2) The department may demand an additional bond if the nature or volume of the business conducted by the warehouseman warrants an increase.

(3) The warehouseman may give a single bond to cover all warehouses operated by him.

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(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under [section 26] must be reported in writing to the director, and an appropriate bond must be filed prior to the operation thereof.

Section 26. **Amount of bond — cancellation.** (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than $20,000 or more than the maximum prescribed in [section 5]. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouseman is also operating as a commodity dealer, he shall also provide a bond as prescribed in [section 50].

(3) If there occurs a deficiency in net assets as required under [section 27], there shall be added to the amount of bond determined in accordance with subsection (1) an amount equal to that deficiency.

(4) Each warehouseman bond shall run continuously with the warehouseman license until canceled by the bonding company. The aggregate annual liability of the surety may in no event exceed the sum of the bond. A continuous bond shall obligate a new penal sum with the commencement of each licensing year.

(5) A 30-day written notice must be given to the department by the bonding company before any bond is canceled.

Section 27. **Net asset requirements.** (1) Each licensee or applicant for a license shall maintain, above all exemptions and liabilities, total net assets liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural commodities that his warehouse or warehouses can accommodate.

(2) No person may be licensed as a warehouseman unless he has and maintains allowable net assets of at least $10,000.

(3) In determining total net assets, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.

(4) If a warehouseman is licensed or applies for licenses to operate two or more warehouses, the maximum number of hundredweight which all such warehouses will accommodate must be considered in determining whether the warehouseman meets the net asset requirements specified in this section.

Section 28. **Duties of warehouseman — content of records.** (1) Each warehouseman shall maintain in a safe place current and complete

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records at all times with respect to all agricultural commodities stored, conditioned, handled, or shipped by him, including agricultural commodities owned by him. Such records must include but are not limited to a daily position record, showing the total quantity of each kind and class of agricultural commodity received and loaded out and the amount remaining in storage at the close of each business day and the warehouseman's total storage obligations for each kind and class of agricultural commodity at the close of each business day.

(2) Every warehouseman purchasing any agricultural commodity from a depositor thereof shall promptly make and keep for 5 years a correct record showing in detail the following information:

(a) the name and address of the depositor;

(b) the date purchased;

(c) the terms of the sale; and

(d) the quality and quantity purchased by the warehouseman and, where applicable, the dockage, tare, grade, size, and net weight.

Section 29. **Schedule of charges — posting.** (1) Before a license to conduct a warehouse is granted, the warehouseman shall file with the director a copy of the schedule of charges for storage and other services. The schedule must be posted in a conspicuous place in his warehouse.

(2) All charges made by any warehouseman for the handling and storage of agricultural commodities must be just and reasonable. However, the director may, upon the complaint of any person or upon his own motion, hold a public hearing and may declare any existing charges for handling or storage of any agricultural commodity to be unreasonable or unjust. After the hearing, the director shall determine and order what is a just and reasonable charge to be imposed or enforced in place of that found to be unreasonable or unjust.

(3) Failure to file and post scheduled charges for the current year will keep in full force the most recently posted and filed schedule rates.

(4) In all cases, the producers will receive the first 15 days of storage without charge.

Section 30. **Required receipt of agricultural commodities according to capacity.** A warehouseman shall receive for storage, conditioning, handling, or shipment without discrimination of any kind, so far as the capacity of his warehouse will permit, all agricultural commodities tendered him in the usual course of business in suitable condition for storage. However, a warehouseman may not be compelled to accept and hold agricultural commodities for storage in such quantities as to block his regular cash agricultural commodity business. A warehouseman may not be required to accept agricultural commodities for storage in excess of working capacity. However, his appointment of space may be modified by rule upon proof that such appointment operates to the disadvantage of either the public or the warehouseman.

Section 31. **Discrimination in charge by warehouseman prohibited.** A warehouseman may not directly or indirectly, by a special

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charge, rebate, drawback, or other device, collect from any person a greater or lesser compensation for any service rendered in the storage, conditioning, handling, or shipment of agricultural commodities than he collects from any other person for a similar circumstance or condition. A warehouseman may not make or give any advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage.

Section 32. **Scale weight tickets — form — issuance.** (1) Scale weight tickets must be bound in books of convenient size and must be numbered consecutively. The original scale weight ticket must be delivered to the person from whom the agricultural commodities are received. One carbon copy of each scale weight ticket must remain as a permanent record.

(2) A scale weight ticket must be issued for each load of agricultural commodity received by the warehouseman.

(3) A scale weight ticket may not be issued or held in lieu of a warehouse receipt. The retention of scale weight tickets in lieu of warehouse receipts by the owner of the grain is at the owner's risk.

(4) There must be plainly printed across the face of such scale weight ticket issued by the warehouseman, in bold type, the words "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN STORAGE".

(5) There must be plainly printed across the face of a combination scale weight ticket and warehouse receipt issued by the warehouseman, in bold type, the words "COMBINATION SCALE WEIGHT TICKET AND WAREHOUSE RECEIPT".

(6) All scale weight tickets must be signed by the warehouseman or his agent.

(7) When scale weight tickets are exchanged for warehouse receipts, the scale weight tickets must be surrendered to the warehouseman.

(8) All scale weight tickets must be converted into cash or warehouse receipts on demand.

Section 33. **Warehouse receipts — written terms.** (1) Warehouse receipts under this part must contain in written terms:

(a) a statement that the warehouse is operated under a license issued by the department;

(b) a statement showing whether it is an original, duplicate, triplicate, or other copy;

(c) a statement showing the name of the warehouse;

(d) a statement showing the name of the city or town where the warehouse is located;

(e) the date the warehouse receipt is issued;

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(f) the number of the warehouse receipt. All receipts must be numbered consecutively.

(g) a statement that the grain is "received in store" from the person named;

(h) a statement of gross weight, dockage, and net weight and the sample report used for grade and protein analysis;

(i) a statement of encumbrances, such as cash or other advances;

(j) a statement that, upon the return of the receipt properly endorsed by the person to whom the order was issued and the payment of the proper charges for storing and handling, delivery will be made in accordance with [sections 22 through 46];

(k) a statement that the grain is properly insured for the benefit of the owner; and

(l) the name of the manager or agent of the warehouse.

(2) The face of the warehouse receipt may also provide for other statements, such as:

(a) the scale weight ticket numbers or the assembly sheet number;

(b) the grade; and

(c) the protein certificate used.

(3) The back of the warehouse receipt may include printed statements, such as:

(a) delivery provisions;

(b) actual-delivery-of-grain provisions;

(c) bailment provisions;

(d) act-of-God provisions;

(e) nonnegotiable provisions; and

(f) endorsements and other statements pertinent to bookkeeping data whenever such statements do not conflict with any state or federal law pertaining to public warehousing or the grading or testing of grain.

(4) A copy of the warehouse receipt issued by the warehouseman must accompany each application for a warehouseman's license.

Section 34. **Warehouse receipt — issuance.** (1) A warehouse receipt is a receipt issued by a licensed warehouseman on a form containing all the information required by [section 33].

(2) No warehouse receipt may be issued except for an agricultural commodity actually delivered to a warehouse for storage.

(3) All warehousemen are required to issue a warehouse receipt for each lot of agricultural commodity received for storage or make payment for the agricultural commodity.

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(4) A warehouse receipt that does not in fact represent an agricultural commodity actually delivered into a warehouse for storage and the origin of which cannot be traced to the actual delivery of the grain represented:

(a) is not legal and is of no value;

(b) has no claim on the agricultural commodity stored in a warehouse; and

(c) has no claim on the warehouseman's bond.

(5) All agricultural commodities in a warehouse belong to the holder of outstanding warehouse receipts except those commodities that are in excess of the total of all outstanding storage obligations. An outstanding warehouse receipt is a warehouse receipt that has not been returned and paid in full on the basis of grade, quality, and quantity by the warehouseman issuing it.

(6) If for convenience the holder of two or more warehouse receipts covering like agricultural commodities wishes to combine them, the new receipt so issued must state the fact that it was issued in lieu of existing receipts. An assembly or recapitulation statement must be made whenever receipts are so combined, and the number or other identification of the statement must be referenced on the new combined receipt. The assembly sheet must be kept on file in the warehouse office. Each canceled receipt must have stamped across its face "Canceled by No. __" (showing the number of the new combination receipt).

(7) A warehouseman who is a grower and conducts such an enterprise may receive his own grain and issue warehouse receipts for agricultural commodities, in the same manner and without discrimination, as though the warehouse and growing enterprises were of separate ownership. However, the warehouseman shall report to the department all warehouse receipts issued to himself as a grower.

(8) When warehouse receipts are prepared on duplicate or triplicate forms, the original copy is the warehouse receipt and must be given to the person storing the agricultural commodity covered by such receipt. The other copies shall have plainly printed across the face the words "duplicate", "triplicate", or "nonnegotiable".

(9) Each warehouse receipt issued must show the amount of cash or value of any merchandise the warehouseman has advanced on the agricultural commodity represented by the receipt, but such notation may not be construed as fixing the date of sale of such grain.

(10) All warehouse receipts must be numbered consecutively as issued by each warehouseman.

Section 35. **Penalty for unlawful issue of warehouse receipts.** A person violating any of the provisions of [section 34] or a designated employee knowingly permitting any agricultural commodity to be delivered contrary to the provisions of [section 34] is guilty of a misdemeanor and punishable as provided in [section 20].

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Section 36. **Partial withdrawal of agricultural commodities — adjustment or substitution of receipt — duties of warehouseman.** When partial withdrawal of his agricultural commodity is made by a depositor, the warehouseman shall make an appropriate notation thereof on the depositor's warehouse receipt or claim or shall cancel and replace it with a warehouse receipt showing the amount of the depositor's agricultural commodity remaining in the warehouse. The warehouseman is liable for the redelivery of all agricultural commodities specified on all outstanding warehouse receipts.

Section 37. **Shipment of stored grain to a terminal grain warehouse outside the state.** (1) Warehouse receipts or signed agreements from the owners of grain, on a form approved by the department and in an amount equal to the number of bushels the warehouseman has in a terminal grain warehouse outside the state, are required for all grain shipped out of state by a warehouseman.

(2) Warehouse receipts covering grain in terminal grain warehouses outside the state must have the words "Owner waives redelivery at point of origin of grain represented by this receipt" printed or stamped on the back.

(3) Waiver or agreements to accept terminal warehouse receipts must be signed in triplicate by the owner of the grain or his agent and by a duly authorized representative of the warehouse, with:

(a) the original to be mailed to the department;

(b) the duplicate copy to be retained by the warehouseman; and

(c) the triplicate copy to be given to the holder of the warehouse receipt.

(4) All grain must be held in bonded and approved terminal warehouses, fully insured for the benefit of the holder of Montana warehouse receipts.

(5) No grain held in terminal warehouses is subject to any lien, mortgage, or encumbrance.

Section 38. **Duty to deliver stored agricultural commodities — damages.** (1) The duty of the warehouseman to deliver agricultural commodities stored is governed by [sections 22 through 46]. Upon the return of a properly endorsed warehouse receipt to the warehouseman and upon payment or tender of all advances and legal charges, agricultural commodities of the grade and quantity named therein must be delivered to the holder of the warehouse receipt.

(2) A warehouseman's duty to deliver any agricultural commodity is fulfilled if delivery is made pursuant to the contract with the depositor as rapidly as it can be done by ordinary diligence. When delivery is made within 48 hours from date of demand or as agreed upon in writing by all parties concerned, the delivery complies with the provisions of this section. An extension of the delivery period may be granted by the department upon written request.

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(3) All redeliveries must be made at the warehouse or station where the agricultural commodity was received unless otherwise agreed.

(4) At the option of the depositor, the warehouseman shall deliver the agricultural commodity at a terminal or, if mutually agreed, shall pay to the depositor the equivalent market value of the agricultural commodity on that date, less any freight and storage charges to the terminal and less other charges which may be allowed by the department.

(5) In addition to other penalties provided, a warehouseman failing to deliver agricultural commodities within the time provided in this section is subject to suit by the person entitled to delivery of the agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damages or liquidated damages of ½ of 1% of the value for each day's delay.

Section 39. **Delivery of grain from different warehouse.** (1) Any warehouseman owning or operating more than one warehouse in this state may deliver grain from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse when grain for storage has been presented at any warehouse in excess of its available storage capacity.

(2) Nothing in subsection (1) confers upon the warehouseman a right to make delivery of grain of substantially lower value than that delivered for storage, though of the same technical grade, in settlement of warehouse receipts.

(3) The warehouseman shall at all times keep on hand in bonded warehouses grain of sufficient quality and quantity to settle all outstanding warehouse receipts.

(4) Freight and other charges must be determined at the point of receipt.

Section 40. **Loss of receipts — conditions of reissue.** While an original warehouse receipt is outstanding and uncanceled by the issuing warehouseman, no other or further receipt may be issued for the agricultural commodity or any part of it covered thereby. However, if a warehouse receipt is lost or destroyed, a new receipt may be issued upon giving satisfactory security in compliance with rules adopted by the department. The new receipt must contain the same terms and conditions and must bear on its face the number and date of the receipt in lieu of which it is issued.

Section 41. **Cancellation of insurance — suspension of license.** Upon cancellation of any policy of insurance required by [sections 23 and 27], the insurance company involved shall give 30 days' advance notice to the department by certified mail, return receipt requested, of cancellation of the policy. If the policy is canceled, the department shall immediately suspend the license of such uninsured warehouseman without a hearing, pursuant to the Montana Administrative Procedure Act. The suspension may not be removed until satisfactory evidence of the existence of an effective policy of insurance complying with the requirements of [sections

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23 and 27] has been submitted to the department or until further order by the department or a court of competent jurisdiction.

Section 42. **Date of termination of storage contracts evidenced by warehouse receipts.** All storage contracts on grain in store in warehouses, as evidenced by a warehouse receipt, must terminate on the last day of the license period as prescribed by rule.

Section 43. **Termination of storage contract — sale of agricultural commodities for charges — notice required.** (1) Storage of agricultural commodities may be terminated by the depositor at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the agricultural commodities or a notice to the warehouseman to sell the commodities.

(2) In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, the warehouseman shall, upon the expiration of the storage contract, sell so much of the stored agricultural commodities at the local market price at the close of business on that day as is sufficient to pay the accrued storage charges. He shall then issue new warehouse receipts for the balance of the agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts. The warehouseman shall notify all warehouse receipt holders of the provisions of this section 30 days prior to the end of the storage period.

Section 44. **Examination of stored agricultural commodities.** A department inspector may examine at any reasonable time during ordinary business hours any stored agricultural commodity and all parts of any warehouse, provided the warehouse or the agricultural commodities stored therein are not endangered by such inspections. Every warehouseman or his agent shall furnish safe and reasonable access to facilities for such examination.

Section 45. **Warehouse shortage — remedies.** (1) Whenever it appears, after an investigation, that a warehouseman does not have in his possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him or when a warehouseman refuses to submit his books, papers, or property to lawful inspection, the department may give notice to the warehouseman to comply with the following requirements:

(a) to cover such shortage;

(b) to give an additional bond as requested by the department; or

(c) to submit to such inspection as the department considers necessary.

(2) If the warehouseman fails to comply with the terms of such notice within 24 hours from the date of issuance of the notice or within such further time as the department may allow, the department may petition the district court in the county where the licensee's principal place of business is located, as shown by the license application, for an order:

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(a) authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouse business and any materials that pertain in any way to that business; and

(b) enjoining the warehouseman from interfering with the department in the discharge of its duties as required by [sections 22 through 46].

(3) Upon taking possession, the department shall give written notice of its action to the surety on the bond of the warehouseman and may notify the holders of record, as shown by the warehouseman's record, of all warehouse receipts or scale weight tickets issued for agricultural commodities to present their warehouse receipts or other evidence of deposits for inspection or to account for the same. The department may thereupon cause an audit to be made of the affairs of the warehouse, including but not limited to the agricultural commodities of which there is an apparent shortage, to determine the amount of shortage and, if possible, to compute the shortage as to each depositor as shown by the warehouseman's records. The department shall notify the warehouseman and the surety on his bond of the amount of the shortage and notify each affected depositor by sending notices to the depositor's last-known address as shown by the records of the warehouseman.

(4) The department shall retain possession of the agricultural commodities in the warehouse or warehouses and the books, papers, and property of the warehouseman until such time as:

(a) the warehouseman or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits;

(b) the surety on the bond has satisfied all such claims pro rata, if the shortage exceeds the amount of the bond; or

(c) the department is ordered by the court to surrender possession.

(5) If during or after the audit provided for in this section or at any other time the department has evidence that the warehouseman is insolvent or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of deposits, the department may petition the district court for the appointment of the department to operate or liquidate the business of the warehouse.

(6) At any time within 10 days after the department takes possession of any agricultural commodities or the books, papers, or property of any warehouse, the warehouseman may serve notice on the department to appear in the district court of the county in which the warehouse is located, at a time to be fixed by the court, and show cause why the agricultural commodities, books, papers, and other property should not be restored to his possession.

(7) All necessary expenses incurred by the department in carrying out the provisions of this section may be recovered in a separate civil action brought by the department in district court or recovered at the same time and as part of the seizure action filed under subsection (2)(a).

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(8) As a part of the expenses so incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out this section.

(9) The department shall set by rule the time limits for:

(a) notification of its action on the surety bond of a warehouseman;

(b) the holders of warehouse receipts or scale weight tickets to provide to the department such evidence of deposit; and

(c) satisfaction of the claims of all holders of warehouse receipts or other evidence of deposits.

Section 46. **Inspection by the department.** (1) The department may investigate any warehouseman who has applied for or who had previously been issued a license and may inspect his warehouse for purposes of determining compliance with [sections 22 through 46] and rules of the department.

(2) The department may investigate any warehouseman or inspect any warehouse that it has reasonable cause to believe is operating in violation of [sections 22 through 46] and rules of the department.

Section 47. **Commodity dealer license requirements — financial responsibility.** (1) A person may not engage in the business of a commodity dealer in this state without first having obtained a license issued by the department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3) A license application must include the following:

(a) the name of the applicant;

(b) the names of the officers and directors if the applicant is a corporation;

(c) the names of the partners if the applicant is a partnership;

(d) the location of the principal places of business;

(e) a sufficient and valid bond as specified in [section 50];

(f) the number and description of trucks or tractor-trailer units owned or leased by the applicant that will be used in the transportation of agricultural commodities purchased pursuant to the provisions of [sections 47 through 54];

(g) a complete financial statement prepared by a licensed accountant according to generally accepted accounting principles, setting forth the applicant's assets, liabilities, and net worth. The commodity dealer shall have and maintain current assets equal to or greater than current liabilities. Assets must be shown at original cost less depreciation. Upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal.

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(h) any other reasonable information the department finds necessary to carry out the provisions and purpose of [sections 47 through 54].

(4) In order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain net assets of at least $50,000 or maintain a bond in the amount of $2,000 for each $1,000 or fraction thereof of net assets deficiency. However, a minimum of $10,000 net assets is required by a commodity dealer to qualify for a license. A bond submitted for purposes of this subsection is in addition to any bond otherwise required under [sections 47 through 50].

(5) The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them.

Section 48. **License fees.** (1) The department shall collect an annual fee for each commodity dealer license according to the following schedule:

Hundredweight (Previous license year cwt volume or estimated yearly cwt)	Rate (per facility)
0 to 25,000	$ 25
25,001 to 50,000	50
50,001 to 125,000	75
125,001 to 250,000	100
250,001 to 375,000	125
over 375,000	150

(2) Each applicant shall also pay a fee of $25 for each truck operated by it in the operation of his business as a commodity dealer.

(3) All fees collected under this section must be placed in the general fund.

Section 49. **License issuance — renewal — expiration.** (1) The department shall issue a license when the applicant has filed the application and complied with the terms and conditions of [sections 47 through 50] and the rules of the department.

(2) A commodity dealer's license may be renewed annually by submitting all required licensing documents.

(3) A commodity dealer's license that has expired may be reinstated by the department upon receipt of all licensing documents required and a penalty fee in the amount of $50 if the document is filed within 30 days from the date of expiration of the commodity dealer's license. At no time during the 30-day period or thereafter may the person act as a commodity dealer. All license applications received after the 30-day penalty period must be considered original applications.

(4) A commodity dealer's license is not transferable.

(5) Any partnership with a partner or any corporation that has an officer, director, or majority stockholder owning at least 10% of issued stock

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who has had a license revoked under [sections 47 through 50] or the United States Warehouse Act is subject to the provisions of [section 12].

Section 50. **Bonding requirement amounts — cancellation.** (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond payable to the state. The aggregate annual liability of the surety may not exceed the sum of the bond. A continuous bond shall obligate a new penal sum with the commencement of each licensing year.

(2) Unless set by department rule, the bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer or warehouseman during the previous 12-month period. The bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period. The department may by rule require a greater percentage in each instance. The minimum amount of bond required by any commodity dealer is $20,000, and the maximum is prescribed in [section 5].

(3) A surety shall notify the commodity dealer and the department by certified mail at least 30 days prior to the cancellation of the bond. The liability of the surety covers purchases made by the commodity dealer during the time the bond is in force. A commodity dealer's bond filed with the department is continuous until canceled by the surety upon 30 days' notice.

Section 51. **Posting of license.** The commodity dealer's license must be posted in a conspicuous location at his place of business. A duplicate commodity dealer's license must be posted at each location at which records are maintained for transactions of the commodity dealer and also within each truck operated by him in the state.

Section 52. **Inspection of premises, books, and records.** The department may at any reasonable time inspect the premises and records of any commodity dealer used in the conduct of his business. A commodity dealer shall, upon request of the director, furnish to the department at any reasonable time and place all books, accounts, records, and papers relating to agricultural commodity transactions within the state. If there exists good cause to believe that a person is doing business as a commodity dealer without a license, the department may inspect the books, papers, and records of the person that pertain to agricultural commodity purchases.

Section 53. **Insufficient checks — prohibition.** No person engaged in business as a commodity dealer may draw or deliver any check, draft, or order for payment of money upon any bank for the purchase of agricultural commodities when at the time of drawing or delivery the maker or drawer does not have sufficient funds or has failed to arrange for credit with the bank or depository for payment in full upon presentation of the check, draft, or order for payment of money. The word "credit" as used in this section means an arrangement or understanding with the bank or depository for payment of the check, draft, or order.

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Section 54. **Payment of purchase price — definitions.** (1) A person required to be licensed as a commodity dealer shall pay 90% of the purchase price to the owner or his agent for agricultural commodities upon delivery and demand by the owner or agent and the remaining 10% not later than 30 days after delivery by the owner or agent unless otherwise agreed to in writing by the parties.

(2) As used in this section, the following definitions apply:

(a) "Delivery" means the transfer by the seller of title to and possession of agricultural commodities to the commodity dealer or to another person in accordance with the agreement between the seller and the commodity dealer.

(b) "Payment" means the actual payment or tender of payment of the agreed purchase price by the commodity dealer to the seller.

Section 55. **Official grain inspectors, samplers, and weighers — designation of seasonal inspection points — assignment of inspectors.** (1) The department shall provide inspectors, samplers, and weighers to enforce [sections 55 through 71]. At all inspection points designated by the department, the department shall provide sufficient official grain inspectors, samplers, and weighers to inspect and weigh all grain subject to state inspection.

(2) The department may, during the grain-marketing season, appoint inspectors to visit the grain-growing districts to investigate the grading, dockage, and weighing of grain and to enforce the rules of the department.

(3) Expenditures for the inspection and weighing at the points designated by the department may not exceed total fee receipts at those points.

Section 56. **Qualifications of official grain inspectors, samplers, and weighers.** Official grain inspectors, samplers, and weighers must be qualified in accordance with the Grain Standards Act. Official grain inspectors, samplers, and weighers may not be directly or indirectly interested in the handling, sorting, shipping, purchasing, or selling of grain or grain commodities.

Section 57. **Penalty for misconduct.** (1) Any official grain inspector, sampler, or weigher guilty of neglect of duty or who knowingly or carelessly inspects, samples, or weighs grain improperly or who directly or indirectly accepts any money or other consideration for neglect of duty or improper performance of duty is guilty of official misconduct and is punishable as provided in 45-7-401.

(2) Any person who improperly influences or attempts to improperly influence any official grain inspector, sampler, or weigher in the performance of his duties is guilty of bribery and is punishable as provided in 45-7-101.

(3) Upon conviction of an offense described in subsection (1), an officer must be removed by the department pursuant to procedures established by department rule.

Section 58. **Establishment of standard grain grades.** (1) The department shall by rule establish standard grades to apply to all grain

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bought or handled by warehouses in this state. The department shall adopt as state grade standards all grades for grain established by the United States department of agriculture.

(2) Grain standards adopted by the department do not apply to grain contracted for before the effective date of the adoption of such standards.

Section 59. **Rules governing dockage — sample inspection.** The department shall adopt rules governing the dockage on inferior grades, which shall apply in all executory contracts entered into after their adoption. If the price or amount to be paid depends on terminal weight or grade, the rules shall control the dockage insofar as dockage affects the price to be paid. The department shall also provide for sample inspection of grain, adopt rules governing sample inspection, and provide that the sample inspection, when made, is final.

Section 60. **Special inspection of grain.** (1) If grain is sold based on Montana grade and is to be shipped from places not provided with state inspection, the buyer, seller, or person making the delivery may have it inspected by notifying an inspector, who shall have the grain inspected. After inspection, the inspector shall issue, on request of the buyer, seller, or person delivering the grain, an inspector's certificate showing the grade of the grain. The person calling for the inspection shall pay a reasonable fee fixed by department rule.

(2) Grain that is shipped to points in this state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of the grain. The charge for the service shall at least equal the entire cost of providing it and shall be paid by the party calling for the inspection.

Section 61. **Sampling grain.** Samples may be drawn from all grain shipped to warehouses and from all grain inspected or weighed. The samples are the property of the state, subject to disposition by the department under rules adopted by the department.

Section 62. **Examination of grain cars at destination.** (1) An official grain inspector, sampler, or weigher, before opening the doors of a car containing grain upon its arrival at any of the places designated by the department for inspection, shall first ascertain the condition of the car and determine whether any leakages have occurred while the car was in transit, determine whether the doors were properly secured and sealed at the point of shipment, and make a record of those facts in all cases, giving seal numbers.

(2) After examinations have been made, the official grain inspector, sampler, or weigher shall securely close and reseal the opened doors, using the special seal of the department.

(3) A record must be kept by the official grain inspectors, samplers, or weighers of all original seals broken, the number of seals, and the date when broken. An official grain inspector, sampler, or weigher shall break the seal, weigh, and superintend the loading of all cars of grain subject to inspection. Any other person who breaks the seal or officially weighs the cars of grain is guilty of a misdemeanor.

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Section 63. **Protein testing laboratory.** (1) The department shall maintain an official protein testing laboratory so designated by the Grain Standards Act.

(2) No other laboratory may officially certify the grade or protein content of grain unless the laboratory is licensed by the department under rules adopted by the department.

(3) The department shall by rule determine the standards of analysis controlling all other official protein testing laboratories in this state.

(4) The department may by rule determine the form of protein certificates issued by it.

Section 64. **Protein test available on all grain delivered to grain warehouses — manner of making test — procedure — fee — penalty.** (1) Each warehouseman shall take samples from each load of grain delivered to his warehouse and preserve the sample in a moistureproof container with the owner's name on it. A 1-pint portion of the composite sample may be submitted to the department, and the balance must be held in the owner's container.

(2) If either the warehouseman or owner is dissatisfied with the results of the protein tests, he may appeal to the department. In case of an appeal, a 1-pint portion of the remainder of the owner's sample must be submitted to the department with a statement of facts of the appeal. A final test, in duplicate, must be made by the department. The department's certificate of the test is final and binding upon both parties in establishing the basis of the price paid by the warehouseman.

(3) A fee established by the department commensurate with the cost of each protein test must be deducted and paid at the time of final settlement.

(4) Upon written request of the owner, an official protein test must be made.

(5) Each warehouseman shall post in a conspicuous place a placard indicating that producers may request, in writing, an official grade and protein certificate. The department shall issue the placard.

(6) A person violating this section is guilty of a misdemeanor.

Section 65. **Fees for inspection, testing, and weighing grain — disposition — investment.** (1) The department shall by rule fix the fees for inspection, testing, and weighing of grain.

(2) Those fees or proceeds are a lien upon the grain until paid.

(3) All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of grain, shall reflect as nearly as possible the actual cost of the services.

(4) All those fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the earmarked revenue fund. Fees deposited in the earmarked

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revenue fund may be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of grain.

(5) The department may direct the board of investments to invest funds from the earmarked revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments must be credited to the proper department account in the earmarked revenue fund.

Section 66. **Records of inspection.** (1) The official grain inspectors, samplers, and weighers have exclusive control at places provided for state inspection of the weighing and grading of grain to be inspected. Suitable books and records must be kept in which must be entered an accurate record of every carload or truckload of grain inspected or weighed by them. The records must show for each car or truck:

(a) the number or other designation of the car or truck;

(b) the net weight of the grain;

(c) the kind of grain and its grade and, if graded below standard No. 1 grade, the reason for such grade.

(2) For each carload or truckload of grain, the official grain inspector shall give a certificate of inspection, showing the kind and grade of the grain, the reason for all grades below No. 1, and the amount to be allowed for dockage, if any. For each carload or truckload weighed, the weigher shall give a weight certificate showing the true weight thereof and containing a statement on the condition of the car or truck and evidences of leakage or damage, if any.

(3) The inspection and weight certificates must be made available to the warehouse loading or unloading the grain, the shipper or his agent, and the railroad company or other carrier by which the grain was shipped or carried.

(4) Official grain inspectors and weighers shall also keep an accurate record of all appeals and decisions and a complete record of every official act, which books and records must be open to inspection by any party of interest.

Section 67. **Appeals to department — hearing and order.** (1) If an owner, consignee, shipper of grain, or warehouseman disagrees with the grade given by the department, he may appeal to the department from the decision within 5 days from the date of certificate by giving notice of appeal. A fee must be charged if the appeal supports the original grade. The notice of appeal may be given by letter stating that the party appeals from the decision of the official grain inspector and specifying the initials and numbers of the cars in which the grain was contained when inspected and graded.

(2) The appellant shall also file with the department a list containing the name and address of each party interested in the subject matter. The department, upon receiving the notice and list of interested parties, shall immediately notify the interested parties of the time and place designated by it for a hearing under the Montana Administrative Procedure Act. At

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the hearing, which must be 5 days from the date of receiving the notice, the department shall inquire into the reasonableness and correctness of the original grading. After the hearing, the department shall affirm or modify the grade as justified by the facts and evidence.

Section 68. **Coloration of grain treated with injurious or toxic substances.** Any grain treated with any injurious or toxic substance or chemical must at the same time be colored or dyed a color contrasting with the natural color of the grain so that the treated grain is readily identifiable as having been treated with an injurious or toxic substance or chemical.

Section 69. **Sale or offering for sale of treated product prohibited.** No person may sell or offer for sale grain that has been treated with any injurious or toxic substance or chemical unless the grain has been colored or dyed a color contrasting with the natural color of the grain. [Section 68] and this section do not apply to the treatment of grain solely for the killing of insects which might be present therein. A person violating this section is guilty of a misdemeanor.

Section 70. **Copies of grades and rules to be furnished and displayed by warehousemen.** (1) The department shall, immediately after the adoption of rules establishing grades fixing dockage, supply all warehousemen with a copy of the grades and rules. A warehouseman shall keep a copy on file in a convenient place in each warehouse. If an office is maintained in connection with the warehouse, a copy of the grades and rules shall be kept on file in the office. A placard notice must be posted in a conspicuous place in every warehouse and office, reading "A copy of Montana grades and rules is on file here for information of interested parties".

(2) A warehouseman shall exhibit a copy of the grades and rules to any interested party at any warehouse or office and permit the interested party to examine the copy.

Section 71. **Dispute as to grade or dockage — laboratory test to be made.** If a disagreement arises between the party receiving and the party delivering the grain at any warehouse in this state as to the proper grade or dockage of grain in accordance with standards at terminal points, an agreed average sample of at least 1 quart of the grain in dispute may be taken by the interested parties and forwarded to the department in a suitable container, marked for identification by the interested parties, mail or express charges prepaid, with the names and addresses of the parties affixed thereto. The department shall examine the grain and determine the appropriate grade and dockage under the inspection rules. The findings of the inspection are binding upon both parties, subject to appeal as provided in [section 67]. If the grain in question is damp, musty, or otherwise out of condition, this fact, with any other necessary information, must accompany the sample.

Section 72. Section 80-5-201, MCA, is amended to read:

"80-5-201. Definitions. When used in this part, the following definitions apply:

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(1) "Agricultural seed" means the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds and includes lawn seeds and mixtures of seeds.

(2) "Bin-run seed sales from one farmer to another farmer" means buyer beware.

(3) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the certifying agency.

(4) "Person" means any individual, firm, partnership, corporation, or association.

(5) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or processing.

(6) "Seed dealer" means any person who offers for sale, sells, or barters agricultural seeds to the ultimate consumer.

(7) "Seed labeler" means any person affixing labels to agricultural seeds with his name and address listed as required in 80-5-102 when such seed is distributed in Montana.

(8) "Seed processing plant" means any place of business that repackages, cleans, blends, treats, or otherwise manipulates agricultural seeds."

Section 73. Section 80-5-202, MCA, is amended to read:

"80-5-202. Licensing — issuance — application — fee — bonding — insurance. (1) All seed processing plants *and* seed labelers shall obtain a license from the department before doing business in this state; however, a Montana certified seed grower, when processing or labeling certified seed from his own production, is not required to be licensed under this section. Bin-run seed sales from one farmer to another are exempt from this part.

(2) All licenses are issued on a fiscal-year basis and expire on June 30 of each year.

(3) Application for license is made in a manner and on forms provided by the department. A nonresident shall file a written power of attorney designating the secretary of state as his agent, and the power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over the nonresident applicant. A nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as his agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.

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(4) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

(5) Each license shall cost no more than $50 a year. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.

(6) Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a license by the department, provided the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies."

Section 74. Section 80-5-203, MCA, is amended to read:

"80-5-203. Dealer's license — exception — fee — application — violation. (1) No person may distribute seed without obtaining a dealer's license from the department for each place of business. No license is required of a person who distributes seeds only in sealed packages of less than 10 pounds, packed by a licensed seed labeler and bearing his name and address. Each dealer's license shall cost no more than $20 a year and expires on June 30 of each year. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part. Any licensed processing plant *or* seed labeler may obtain a dealer's license without additional fee.

(2) Application for a dealer's license shall be made in a manner and on forms provided by the department. Such forms shall require among other things the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(3) Violation of provisions of this section or the distribution of agricultural seeds not legally labeled constitutes adequate grounds for canceling a license or denying a license to a dealer."

Section 75. **Repealer.** Sections 80-3-501 through 80-3-513, 80-4-101 through 80-4-106, 80-4-111 through 80-4-126, 80-4-201 through 80-4-209, 80-4-221 through 80-4-234, and 80-4-311 through 80-4-313, MCA, are repealed.

Section 76. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 77. **Effective date.** This act is effective July 1, 1983.

Approved April 15, 1983.

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CHAPTER NO. 540

AN ACT TO ESTABLISH PROCEDURES TO BE FOLLOWED BY THE HUMAN RIGHTS COMMISSION IN THE ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND TO PROVIDE FOR CONSISTENCY OF INTERPRETATION AND ENFORCEMENT OF THE GOVERNMENTAL CODE OF FAIR PRACTICES AND THE HUMAN RIGHTS LAWS; AMENDING SECTION 49-3-101, MCA; REPEALING SECTION 49-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-3-101, MCA, is amended to read:

"49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(4) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(5) "State *or* local governmental *agency*" means:

(a) *any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality* of state government; *or*

(b) *a county, city, town, school district, or other unit* of local government and *any instrumentality* of local government.

(6) "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task."

Section 2. **Rulemaking authority.** The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;

(2) conducting investigations of complaints;

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(3) petitioning for a declaratory ruling, as provided in [section 4]; and

(4) conduct of hearings.

Section 3. **Retaliation prohibited.** It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

Section 4. **Procedure for claiming exemption.** A state or local governmental agency seeking to apply any exemption from the requirements of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for applying an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. The burden is on the petitioner to demonstrate that an exemption should be applied. Any provision in this chapter allowing an exemption from its requirements must be strictly construed.

Section 5. **Filing complaints.** A complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. A complaint not filed within that time may not be considered by the commission.

Section 6. **Form of complaint.** A complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

Section 7. **Temporary relief by court order.** (1) At any time after a complaint is filed with the commission under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurred or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

Section 8. **Informal settlement.** The commission staff shall promptly and impartially investigate the matters set out in a complaint filed with the commission. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by informal conference, conciliation, and persuasion.

Section 9. **Contested case hearing before commission.** (1) If the informal efforts to eliminate the discrimination alleged in a complaint filed

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with the commission are unsuccessful, the staff shall inform the commission of the failure and the commission shall serve written notice, together with a copy of the complaint, requiring the state or local governmental agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The commission hearing must be held in the county where the unlawful conduct is alleged to have occurred unless the state or local governmental agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the commission staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act, except as provided in [section 12].

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorney fees. The court in its discretion may award the prevailing party reasonable attorney fees. Such action must comply with the Montana Rules of Civil Procedure.

Section 10. **Procedure upon a finding of discrimination by commission.** (1) If the commission finds that a state or local governmental agency against which a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order it to refrain from engaging in the discriminatory practice. The order may:

(a) prescribe conditions for the governmental agency's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against; and

(c) require a report on the manner of compliance.

(2) The order may not require the payment of punitive damages.

(3) If a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with the order or agreement, the period of time may not exceed 3 years.

Section 11. **Procedure upon failure by commission to find discrimination.** If the commission finds that a state or local governmental agency against which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and serve on the complainant an order dismissing the complaint.

Section 12. **Injunction to enforce commission order.** If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

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Section 13. **Filing a complaint in district court.** (1) The commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to [section 9] and has determined that it will be unable to hold a contested case hearing within 12 months of the date the complaint was filed under [section 5]; and

(b) 180 days have elapsed since the complaint was filed and the efforts of the commission staff to settle the complaint after informal investigation pursuant to [section 8] are unsuccessful.

(2) Within 90 days after receipt of a letter issued by the commission pursuant to subsection (1), the complainant shall petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of a letter issued by the commission, the complaint shall be barred.

(3) If the district court finds, in an action under this section, that a state or local governmental agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in [section 10] for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

Section 14. **Repealer.** Section 49-3-303, MCA, is repealed.

Section 15. **Codification instruction.** Sections 2 through 13 are intended to be codified as an integral part of Title 49, chapter 3, and the provisions of Title 49, chapter 3, apply to sections 2 through 13.

Section 16. **Effective date.** This act is effective on passage and approval.

Approved April 15, 1983.

CHAPTER NO. 541

AN ACT CREATING A 10-YEAR HIGHWAY RECONSTRUCTION TRUST FUND ACCOUNT; ALLOCATING PORTIONS OF THE COAL SEVERANCE, GASOLINE LICENSE, AND SPECIAL FUELS TAXES TO THE ACCOUNT; ALLOCATING TO THE ACCOUNT ALL FUNDS RECEIVED BY THE DEPARTMENT OF HIGHWAYS PURSUANT TO SECTION 17-3-201, MCA; DIRECTING THE DEPARTMENT OF HIGHWAYS TO DEVELOP A PROGRAM FOR THE RECONSTRUCTION AND PRESERVATION OF HIGHWAYS BASED ON NEED; CHANGING THE PERCENTAGE ALLOCATION OF COAL SEVERANCE TAX PROCEEDS; AMENDING SECTIONS 15-35-108 AND 17-3-201, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the highways on the primary and secondary systems of Montana are deteriorating more quickly than existing program and funding levels permit their construction and reconstruction at safe and acceptable standards, and part of this deterioration results from the impact of mineral development; and

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WHEREAS, a safe and reliable highway system is essential to the free and efficient movement of people and goods throughout the state and to an effective state transportation system; and

WHEREAS, reconstruction, repair, and pavement preservation on Montana's federal-aid highway system will cost less now than in the future, and implementation of these essential activities requires a 10-year reconstruction and pavement preservation program to be financed by funds allocated to a highway reconstruction trust fund account.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Highway reconstruction trust account.** (1) There is a highway reconstruction trust account created in the earmarked revenue fund.

(2) The highway reconstruction trust fund account consists of the following allocations:

(a) from the taxes collected pursuant to 15-35-103 for each fiscal year beginning on or after July 1, 1986, and ending on or before June 30, 1993, the amounts allocated to the account pursuant to 15-35-108;

(b) for each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 1993, all money received from the state treasurer pursuant to 17-3-201; and

(c) from the taxes collected pursuant to 15-70-204 and 15-70-321, for each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 1993, an amount that, when added to the amount received pursuant to subsections (2)(a) and (2)(b), will equal appropriated expenditures.

Section 2. **Expenditures.** The department shall expend the money of the highway reconstruction trust fund account on the federal-aid interstate, primary, and secondary highway systems. If needed, these funds may be apportioned to the various federal-aid systems to match the federal-aid funds available for obligation.

Section 3. **Reconstruction trust program.** (1) Subject to [section 2], the department shall administer a program to initiate, plan, design, and carry out reconstruction projects on the primary and secondary systems to straighten, widen, repair, or preserve existing pavement or make major improvements to existing highways. Funds expended under [section 2] may be used for pavement preservation projects on the interstate and primary systems but may not be used for routine repairs. The department shall expend these funds throughout the state according to need, without regard to 60-3-203. Priority must be given to those projects necessitated in whole or in part by the impact of mineral development.

(2) In order to accommodate changes in the financial district structure and implementation of the reconstruction program, the department may suspend the 25% overrun limitation on the allocation of federal-aid primary funds for fiscal years 1984 and 1985.

Section 4. Section 17-3-201, MCA, is amended to read:

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"17-3-201. Deposit of gas and oil royalties from federal government in highway account. *For each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 1993,* the state treasurer *shall* pay 37 ½% of the moneys received from the treasurer of the United States as the state's share of gas, oil, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended, to the highway *reconstruction trust fund* account in the earmarked revenue fund."

Section 5. Section 15-35-108, MCA, is amended to read:

"15-35-108. Disposal of severance taxes. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1986, and ending June 30, 1987, 6% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the earmarked revenue fund. Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the earmarked revenue fund.

(3) Coal severance tax collections remaining after *the allocations provided by subsections (1) and (2)* are allocated in the following percentages of the remaining balance:

(a) to the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine;

(b) 2 ½% until December 31, 1979, and thereafter 4 ½% to the earmarked revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26 ½% until July 1, 1979, and thereafter 37 ½% to the earmarked revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the 2 fiscal years following June 30, 1977, 13% to the earmarked revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the earmarked revenue fund for state equalization aid to public schools of the state;

(f) 1% to the earmarked revenue fund to the credit of the county land planning account;

(g) 1 ¼% to the sinking fund to the credit of the renewable resource development bond account;

(h) 5% to the earmarked revenue fund to the credit of a trust fund for the purpose of parks acquisition or management, protection of works of art

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in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired;

(i) 1% to the earmarked revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(j) ½ of 1% to the earmarked revenue fund for conservation districts;

(k) 1 ¼ % to the sinking fund to the credit of the water development sinking account;

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 6. **Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 60, chapter 3, part 2, and the provisions of Title 60 apply to sections 1 through 3.

Section 7. **Effective date — termination date.** Sections 1 through 5 are effective July 1, 1983, and terminate July 1, 1993.

Approved April 16, 1983.

CHAPTER NO. 542

AN ACT DELINEATING PROFESSIONS EXCLUDED FROM MUNICIPAL CONTRACT RESTRICTIONS; AMENDING SECTION 7-5-4301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-4301, MCA, is amended to read:

"7-5-4301. Power to enter and execute contracts. (1) The city or town council has power to make any and all contracts necessary to carry into effect the powers granted by this code and to provide for the manner of executing the same.

(2) All necessary contracts for professional, technical, engineering, and legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307. *Provided, however, contracts wherein the value of the majority of the services to be rendered constitute services other than professional, technical, engineering, and legal services must be*

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awarded under the bidding procedure provided for in 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 18, 1983.

CHAPTER NO. 543

AN ACT TO GENERALLY REVISE THE TIME PERIOD FOR THE RETENTION OF SCHOOL RECORDS; AMENDING SECTIONS 20-1-212, 20-7-101, AND 20-9-215, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-1-212, MCA, is amended to read:

"20-1-212. Destruction of old records by officer. *(1) Unless destruction may be otherwise required by federal law, a* school officer may destroy old worthless reports, papers, or records in his office*:*

(a) that have served their purpose and that are substantiated by permanent records, upon the order of the board of trustees and with the approval of the department of administration*; and*

(b) after a retention period of 5 years.

(2) For the purposes of subsection (1), old worthless reports, papers, or records do not include student records and records of employment. Such records or copies of such records must be permanently kept."

Section 2. Section 20-7-101, MCA, is amended to read:

"20-7-101. Standards of accreditation. *(1)* Standards of accreditation for all schools shall be adopted by the board of public education upon the recommendations of the superintendent of public instruction.

(2) Standards for the retention of school records must be as provided in 20-1-212."

Section 3. Section 20-9-215, MCA, is amended to read:

"20-9-215. Destruction of certain financial records. Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county or school district officer after a period of 5 years."

Approved April 18, 1983.

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CHAPTER NO. 544

AN ACT TO PROVIDE FOR THE LICENSING AND REGULATION OF SOCIAL WORKERS; CREATING A STATE BOARD OF SOCIAL WORK EXAMINERS; CREATING A COMMUNICATIONS PRIVILEGE; PROVIDING FOR VIOLATIONS AND PENALTIES; AND ALLOWING DISABILITY AND HEALTH INSURANCE COVERAGE FOR WORK DONE BY LICENSED SOCIAL WORKERS; AMENDING SECTION 33-30-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board of social work examiners.** (1) The governor shall appoint a board of social work examiners consisting of five members. Four members must be licensed social workers, and:

(a) one member must be in the private practice of social work;

(b) one member must be employed by a state social service agency;

(c) one member must be in the medical or social welfare field; and

(d) one member must be an educator in the field of social work.

(2) One member must be appointed from and represent the general public and may not be engaged in social work.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated a quasi-judicial board. Members are appointed, serve, and are subject to removal in accordance with 2-15-124.

Section 2. **Purpose.** The legislature finds and declares that because the profession of social work profoundly affect the lives of people of this state it is the purpose of [sections 2 through 13] to provide for the common good by insuring ethical, qualified, and professional practice of social work. [Sections 2 through 13] and the rules promulgated under [section 4] set standards of qualification, education, training, and experience and will establish professional ethics for those who seek to engage in the practice of social work as licensed social workers.

Section 3. **Definitions.** As used in [sections 2 through 13]:

(1) "Board" means the board of social work examiners established under [section 1].

(2) "Department" means the department of commerce.

(3) "Licensee" means a person licensed under [sections 2 through 13].

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

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(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services; and

(f) research or teaching related to social work.

Section 4. **Duties of board.** The board shall:

(1) subject to 37-1-101, examine qualified applicants, issue licenses to qualified applicants that meet the requirements of [this act], and renew licenses under the provisions of [this act];

(2) recommend prosecutions for violations of [section 13] to the attorney general or the appropriate county attorney, or both;

(3) annually publish a list of the names and addresses of all persons who are licensed social workers;

(4) establish requirements for continuing education that are a condition of license renewal;

(5) meet at least once every 3 months to perform the duties described in this section. The board may, once a year by a consensus of its members, determine that there is no necessity for a board meeting.

(6) distribute a copy of the ethical standards to the certified masters of social work; and

(7) adopt rules that set professional, practice, and ethical standards for licensed masters of social work and such other rules as may be reasonably necessary for the administration of [sections 2 through 13].

Section 5. **Representation to public as licensed social worker — limitations on use of title.** (1) No person may represent himself to be a licensed social worker by adding the letters "LSW" after his name or by any other means unless licensed under [sections 2 through 13].

(2) Subsection (1) does not prohibit:

(a) qualified members of other professions such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities from doing social work consistent

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with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social work" or "licensed social worker";

(b) activities, services, and use of an official title by a person in the employ of a federal, state, county, or municipal agency or an educational, research, or charitable institution which are a part of the duties of the office or position;

(c) an employer from performing social work like activities performed solely for the benefit of his employees;

(d) activities and services of a student, intern, or resident in social work pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activities and services constitute a part of the supervised course of study;

(e) activities and services of a person who is not a resident of this state, which services are rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform such activities and services. However, such persons shall report to the department the nature and extent of the activities and services if they exceed 10 days in a calendar year.

(f) pending disposition of the application for a license, activities and services by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform such activities and services in the state of his former residence.

Section 6. **License requirements — exemptions.** (1) A license applicant shall satisfactorily complete an examination prepared and administered by the board, except that during the 365-day period following the effective date of [sections 2 through 13] a license must be granted without examination if the requirements of subsection (2) are met.

(2) Before an applicant may take the examination, he shall present three letters of reference from social workers, psychiatrists, psychologists, or psychiatric nurses who have knowledge of the applicant's professional performance and demonstrate to the board that he:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has accumulated 3,000 hours of practice in psychotherapy within the past 5 years; and

(c) abides by the social work ethical standards adopted under [section 4].

(3) An applicant who has failed the examination may reapply to take the examination.

(4) An applicant is exempt from the examination requirement if he satisfies the board that he is licensed, certified, or registered under the laws

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of a state or territory of the United States that imposes substantially the same requirements as [sections 2 through 13] and that he has passed an examination similar to that required by the board.

Section 7. **Fees.** (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board equal to the cost of processing the application.

(2) Each applicant for a license required to take an examination shall, prior to commencement of the examination, pay an examination fee set by the board equal to the cost of administering the examination.

(3) Each applicant shall, prior to receipt of a license or license renewal, pay a fee set by the board equal to the cost of issuing a license.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in an earmarked revenue fund for the use of the board.

Section 8. **Issuance, effective date, and display of license.** (1) Upon successful completion of the examination required by [section 6] or upon demonstration by a person that he is exempt from examination and has otherwise fulfilled the requirements of [section 6], the applicant must be issued a license attesting to the date and fact of licensure. The license is effective on the date of issuance and expires 2 years after that date.

(2) The license must be displayed in the registrant's place of business or employment.

Section 9. **Renewal of license.** (1) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(2) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of completion of continuing education requirements.

Section 10. **Grounds for revocation, suspension, or refusal to renew license.** The board may reprimand a licensee or revoke, suspend, or refuse to renew the license of a licensee found to have committed:

(1) fraud or deceit in obtaining a license or license renewal;

(2) gross negligence, incompetency, or misconduct in the practice of social work as a licensed social worker;

(3) a felony;

(4) a violation of the rules for licensed social workers adopted by the board;

(5) a misdemeanor under [section 13]; or

(6) any of the following unprofessional acts:

(a) misrepresentation of the type or status of his license;

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(b) intentionally or recklessly causing physical or emotional harm to a client;

(c) misrepresentation of his professional qualifications, affiliations, or purposes;

(d) sexual relations with a client, solicitation of sexual relations with a client, sexual misconduct, or a sex offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;

(e) performance of or representation of his ability to perform professional services beyond his field or fields of competence, as established by his education, training, and experience;

(f) failure to maintain the confidentiality, except as otherwise required or permitted by law, of all information received from a client during the course of treatment and all information about the client obtained from tests or other means;

(g) prior to the commencement of treatment, failure to disclose to a client or prospective client the fee to be charged for professional services or the basis upon which such fee will be computed; or

(h) advertising in a manner that is false or misleading.

Section 11. **Procedure for charging violation.** (1) Any member of the board or other person may charge a licensee with a violation of [section 10]. The charge must be made by affidavit and subscribed and sworn to by the person making it and filed with the department. The charge must be investigated by the board and, unless the board dismisses the charge after investigation as unfounded or trivial, the board must act on the charge within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to reprimand him or revoke, suspend, or refuse to renew his license and the notice contains those matters required by 2-4-601.

(2) Any hearing on the charge must be held before all five members of the board and must be conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act.

Section 12. **Privileged communications — exceptions.** A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee

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may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

Section 13. **Violations — penalties.** (1) It is a misdemeanor for a person to:

(a) represent himself as a licensed social worker without being licensed under [sections 2 through 13];

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) knowingly make a false statement on any form used by the board to implement [sections 2 through 13] or the rules adopted under [sections 2 through 13].

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of a second offense under this section shall be punished by both such fine and imprisonment.

Section 14. Section 33-30-101, MCA, is amended to read:

"**33-30-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care, and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary.

(2) "Health services" means the health care and services provided by hospitals or other health care institutions, organizations, associations, or groups and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry, and podiatry; nursing services; *licensed social worker or psychologist;* medical appliances, equipment, and supplies; drugs, medicines, ambulance services, and other therapeutic services and supplies.

(3) "Membership contract" means any agreement, contract, or certificate by which a health service corporation describes the health services or benefits provided to its members or beneficiaries."

Section 15. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, apply to section 1.

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Section 16. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 18, 1983.

CHAPTER NO. 545

AN ACT ESTABLISHING A PENALTY FOR KNOWINGLY MISREPRESENTING THE VOTING RECORD OR PUBLIC POSITION OF A CANDIDATE; AMENDING SECTION 13-35-234, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-234, MCA, is amended to read:

"13-35-234. Political criminal libel — misrepresenting voting records. (1) It is unlawful for any person to make or publish any false statement or charge reflecting on any candidate's character or morality *or to knowingly misrepresent the voting record or position on public issues of any candidate.* A person making such a statement *or representation* with knowledge of its falsity or with a reckless disregard as to whether it is true or not is guilty of a misdemeanor.

(2) In addition to the misdemeanor penalty of subsection (1), a successful candidate who is adjudicated guilty of violating this section may be removed from office as provided in 13-35-106 and 13-35-107."

Approved April 18, 1983.

CHAPTER NO. 546

AN ACT RAISING THE MILL LEVY LIMIT FOR MUNICIPAL VOLUNTEER FIRE DEPARTMENTS; AMENDING SECTION 7-33-4111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-4111, MCA, is amended to read:

"7-33-4111. Tax levy for volunteer fire departments. For the purpose of supporting volunteer fire departments in any city or town which does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may levy, in addition to other levies permitted by law, a special tax not exceeding *4* mills *upon all* of the property of the city or town subject to taxation."

Approved April 18, 1983.

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CHAPTER NO. 547

AN ACT AUTHORIZING BOARDS OF COUNTY COMMISSIONERS TO DISPOSE OF COUNTY PROPERTY ACCORDING TO THE BEST INTEREST OF THE COUNTY; AMENDING SECTIONS 7-8-2211, 7-8-2218, AND 7-8-2220, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2211, MCA, is amended to read:

"7-8-2211. Authorization to sell and exchange county property. (1) *Boards* of county commissioners of this state have the power to sell, *trade, or exchange* any real or personal property, however acquired, belonging to the county *that* is not necessary to the conduct of *county* business or the preservation of its property.

(2) Whenever a county purchases equipment as provided in 7-5-2301 through 7-5-2308, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as provided in 7-8-2214 or may be sold at public auction as provided in 7-8-2212, in the discretion of the board.

(3) Any sale, trade, or exchange of real or personal property shall be accomplished under the provisions of Title 7, and in an exchange of real property the properties shall be appraised and no exchange of county property may be made unless property received in exchange therefor shall be of an equivalent value. In the event the properties are not of equivalent values, the exchange may be completed if a cash payment is made in addition to the delivery of title for property having the lesser value."

Section 2. Section 7-8-2220, MCA, is amended to read:

"7-8-2220. Use of proceeds of property disposition. The funds derived from *property disposed of in accordance with 7-8-2211*, in the discretion of the board of county commissioners, may be credited *to any account that is in the best interest of the county.*"

Section 3. Section 7-8-2218, MCA, is amended to read:

"7-8-2218. Procedure if property not sold at public auction. If no bid or offer is made for any property offered for sale at public auction, after notice and appraisal given as provided in 7-8-2212 and 7-8-2214, the board of county commissioners may, at any time thereafter, sell such property at private sale and may on such private sale accept as the purchase price therefor an amount not less than *70%* of the appraised value thereof."

Approved April 18, 1983.

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CHAPTER NO. 548

AN ACT TO CHANGE THE BASIS ON WHICH EACH SCHOOL DISTRICT RECEIVES ITS PRO RATA SHARE OF THE AVAILABLE APPROPRIATIONS FOR SPECIAL EDUCATION WHENEVER THE TOTAL ALLOWABLE COST OF THE SPECIAL EDUCATION BUDGETS EXCEEDS AVAILABLE APPROPRIATIONS; AMENDING SECTION 20-7-431, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-431, MCA, is amended to read:

"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting. (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in 20-9-321, the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

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(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund moneys for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

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(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction shall not approve a maximum-budget-without-a-vote for special education which exceeds legislative appropriations.

(b) If *the total allowable cost of the* special education budgets approved by the superintendent of public instruction *exceeds* legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon *prioritized budget items as established by the superintendent of public instruction.* The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the maximum-budget-without-a-vote for special education and is the responsibility of the school district."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

CHAPTER NO. 549

AN ACT REQUIRING PRIOR NOTIFICATION TO PERSONS APPOINTED TO SERVE ON COMMITTEES TO PREPARE ARGUMENTS FOR AND AGAINST BALLOT ISSUES; PROVIDING THAT NO PERSON MAY BE REQUIRED TO SERVE ON SUCH A COMMITTEE; AMENDING SECTIONS 13-27-402 AND 13-27-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-402, MCA, is amended to read:

"13-27-402. Committees to prepare arguments for and against ballot issues. *(1)* The arguments advocating approval or rejection of the ballot issue and rebuttal arguments shall be submitted to the secretary of state by committees appointed as provided in this section:

(a) The committee advocating approval of an act referred to the people or a constitutional amendment proposed by the legislature or an act referred to the people by referendum petition shall be composed of one senator known to favor the measure, appointed by the president of the senate; one representative known to favor the measure, appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members.

(b) The committee advocating rejection of a ballot issue referred to the people or proposed by the legislature shall be composed of one senator appointed by the president of the senate; one representative appointed by the speaker of the house of representatives; and one individual who need not be a member of the legislature, appointed by the first two members. Whenever possible, the members shall be known to have opposed the issue.

(c) A three-member committee advocating approval of a ballot issue proposed by any type of initiative petition or advocating rejection of any

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ballot issue that is a legislative act referred to the people by referendum petition shall be appointed by the person submitting the petition to the secretary of state under the provisions of 13-27-202.

(d) A committee advocating rejection of a ballot issue proposed by any type of initiative petition shall be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member shall be appointed by the first four members. All members shall be known to favor rejection of the issue.

(2) No person may be required to serve on any committee under this section."

Section 2. Section 13-27-403, MCA, is amended to read:

"13-27-403. Appointment to committee. (1) Appointments to committees advocating approval or rejection of an act referred to the people or a constitutional amendment proposed by the legislature shall be *made* no later than 4 months before the election at which the ballot issue will be voted on by the people. *All persons responsible for appointing members to such committees shall submit to the secretary of state the names and addresses of three prospective appointees for each position, set forth in the order of preference of appointment, no later than 3 weeks before the deadline for making such appointments.*

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition shall be *made* no later than 10 days after the measure is certified to the governor. *All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of two prospective appointees for each position, set forth in the order of preference of appointment, no later than 2 weeks after the final date for filing the petition in accordance with 13-27-301.*

(3) All prospective appointees to a committee pursuant to subsection (1) must be notified by the secretary of state by certified mail, with return receipt requested, at least 15 days before the appointment deadline specified in subsection (1). A prospective appointee may assent or decline to serve on the committee by so informing the secretary of state. Lack of response to the secretary of state for any reason 10 days after mailing of notice is considered to be refusal of appointment.

(4) All prospective appointees to a committee pursuant to subsection (2) must be notified by the secretary of state by certified mail, with return receipt requested, at least 8 days before the appointment deadline specified in subsection (2). A prospective appointee may assent or decline to serve on the committee by so informing the secretary of state. Lack of response to the secretary of state for any reason 5 days after mailing of notice is considered to be refusal of appointment.

(5) The secretary of state shall determine which of the prospective appointees assenting to serve on the committee shall be appointed,

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according to the order of preference specified by the appointing authority, and shall so notify all prospective appointees by the appointment deadline specified in subsection (1) or (2), respectively."

Approved April 18, 1983.

CHAPTER NO. 550

AN ACT CREATING THE BOARD OF PRIVATE SECURITY PATROLMEN AND INVESTIGATORS; REQUIRING THE LICENSING OF PRIVATE SECURITY AND DETECTIVE BUSINESSES; REQUIRING THE REGISTRATION OF ARMED AND UNARMED PRIVATE DETECTIVES AND SECURITY GUARDS; AUTHORIZING THE BOARD TO ADOPT RULES; PROVIDING FOR THE SUSPENSION AND REVOCATION OF LICENSES, REGISTRATIONS, AND IDENTIFICATION CARDS; REQUIRING THE APPROVAL OF ALL WEAPONS USED BY REGISTRANTS; REGULATING THE UNIFORMS AND INSIGNIA WORN BY EMPLOYEES OF LICENSEES; PROVIDING A PENALTY; AMENDING SECTIONS 37-60-101, 37-60-103 THROUGH 37-60-105, 37-60-201, 37-60-202, 37-60-301 THROUGH 37-60-310, 37-60-312, 37-60-314, 37-60-321, AND 37-60-402 THROUGH 37-60-405, MCA; REPEALING SECTIONS 37-60-102, 37-60-311, AND 37-60-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Board of private security patrolmen and investigators.** (1) There is a board of private security patrolmen and investigators.

(2) The board consists of seven voting members appointed by the governor with the consent of the senate. The members shall represent:

(a) one contract security company, as defined by 37-60-101;

(b) one proprietary security organization, as defined by 37-60-101;

(c) one city police department;

(d) one county sheriff's department;

(e) one member of the public;

(f) one member of the peace officers' standards and training advisory council; and

(g) a licensed private investigator.

(3) Members of the board must be at least 25 years of age and have been residents of this state for more than 5 years.

(4) The appointed members of the board shall serve for a term of 3 years. The terms of board members shall be staggered.

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(5) The governor may remove a member for misconduct, incompetency, neglect of duty, or unprofessional or dishonorable conduct.

(6) A vacancy on the board must be filled in the same manner as the original appointment and may only be for the unexpired portion of the term.

(7) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

Section 2. Section 37-60-101, MCA, is amended to read:

"37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals. A person whose sole function is to maintain or repair a security alarm system is not included within the meaning of this definition.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose principal duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who, at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrolmen and investigators provided for in [section 1].

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of commerce *provided for in 2-15-1801.*

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(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts any of the investigations enumerated in subsection (13) in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities.

(11) "Licensee" means a person licensed under this chapter.

(12) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(13) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(14) "Private security guard" means an individual employed to protect a person or property or both a person and property from criminal acts and whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

(15) "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(16) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(17) "Security alarm system" means an assembly of equipment and devices, or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm

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response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

(18) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(19) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

(20) "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose principal duty is that of a private security guard, armored car service guard, or alarm response runner, who does not wear, carry, possess, or have access to a firearm in the performance of those duties."

Section 3. Section 37-60-103, MCA, is amended to read:

"37-60-103. Purpose. *The purpose of this chapter is to increase the levels of integrity, competency, and performance of private security personnel and private investigators in order to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by private security personnel or private investigators."*

Section 4. Section 37-60-104, MCA, is amended to read:

"37-60-104. Restrictions on contract security company and proprietary security organization. *No employee of a contract security company or proprietary security organization* may make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing which he has been hired or engaged to protect, guard, or watch."

Section 5. Section 37-60-105, MCA, is amended to read:

"37-60-105. Exemptions. This chapter does not apply to:

(1) any one person employed singly and exclusively by any one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and has little contact with the public;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons *or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit*;

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(4) a charitable, philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit;

(5) an attorney at law in performing his duties as such attorney at law;

(6) a collection agency *or finance company licensed to do business under the laws of this state,* or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency *or company,* including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

(7) special agents employed by railroad companies, provided the railroad company notifies the board that such agents are operating in the state;

(8) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them*; or*

(9) an insurance adjuster, as defined by 37-60-101(10)."

Section 6. Section 37-60-201, MCA, is amended to read:

"**37-60-201. Organization — meetings — records.** *The board shall meet annually and shall elect from among the seven members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.*"

Section 7. Section 37-60-202, MCA, is amended to read:

"**37-60-202. Rulemaking power.** The *board shall* adopt and enforce reasonable rules:

(1) *specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license, registration, or identification card;*

(2) fixing the qualifications of *resident managers, qualifying agents,* licensees, *registrants, and holders of identification cards,* in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(3) *establishing, in accordance with 37-1-134, application and examination fees for original or renewal licenses, registrations, and identification cards, and providing for refunding of any such fees;*

(4) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the

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board, establishing qualification requirements and license fees for those offices;

(5) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs and firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to maintain such insurance coverage as the board considers necessary;

(9) defining "unprofessional conduct" for the purposes of removal from the board and suspension or revocation of licenses, registrations, and identification cards;

(10) establishing the expiration and renewal periods for licenses, registrations, and identification cards; and

(11) for the temporary employment of persons without the required registration or identification cards."

Section 8. **Compensation of members — expenses.** Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

Section 9. **Attorney general to act as attorney for the board.** The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity shall be paid out of board money in the earmarked revenue fund.

Section 10. Section 37-60-301, MCA, is amended to read:

"37-60-301. License required. *Except as provided in 37-60-105, it is unlawful for any person to act as a contract security company or proprietary security organization or private investigator within this state without having first obtained a license from the board. Those persons licensed on [the effective date of this act] shall retain their current licensure status and must renew their licenses on the renewal date as prescribed by the board."*

Section 11. Section 37-60-302, MCA, is amended to read:

"37-60-302. Qualifying agent and resident manager required — substitution. *(1)* An *applicant* for a license under this chapter, *other than an individual to operate as a contract security company or a private investigator, shall, upon or before application to the board, appoint for the duration of the license:*

(a) a resident manager for each branch office located within this state, under whose direct supervision and control the business of the applicant shall be conducted; and

(b) a qualifying agent.

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(2) Every qualifying agent and resident manager shall satisfy all of the appropriate licensing requirements of this chapter as though the applicant were an individual.

(3) If a qualifying agent or resident manager for any reason ceases to perform the duties of a qualifying agent or resident manager on a regular basis, the licensee shall promptly notify the board by certified mail of that fact and of the name of a substitute individual, who shall make application to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time."

Section 12. Section 37-60-303, MCA, is amended to read:

"37-60-303. License qualifications. *(1) An applicant for a license to act as a contract security company or a proprietary security organization shall submit evidence under oath that he:*

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with such other experience qualifications as may be set by the rules of the board.

(2) Every applicant for a license to act as a private investigator shall submit evidence under oath that he:

(a) is a citizen of the United States;

(b) is at least 25 years of age;

(c) has at least a high school education or its equivalent;

(d) is a resident of this state;

(e) has not been convicted of a felony or a crime involving moral turpitude;

(f) has not been dishonorably discharged from any branch of the United States military service;

(g) is of good moral character; and

(h) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

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(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business;

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; or

(iv) has been graduated from an accredited university or college with a degree in police administration.

(3) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.

(4) The board shall require an applicant to demonstrate by written examination such additional qualifications as the board may by rule require."

Section 13. Section 37-60-304, MCA, is amended to read:

"37-60-304. Licenses — application form and content. *(1) Application for a license shall be made on a form prescribed by the board and accompanied by the application fee set by the board.*

(2) An application shall be made under oath and shall include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, or a private investigator;

(e) two recent photographs of the applicant, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(f) a statement of his experience qualifications;

(g) such other information, evidence, statements, or documents as may be prescribed by the rules of the board; and

(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager and, if the applicant is a corporation, a certified copy of its certificate of incorporation or certificate of authority issued by the secretary of state.

(3) The board shall verify the statements in the application and the applicant's moral character. The board shall send a copy of the application to the chief of police, the sheriff, and the county attorney in whose jurisdiction the principal office of the applicant is to be located."

Section 14. Section 37-60-305, MCA, is amended to read:

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"37-60-305. Armed guards and investigators — registration requirements. *(1) Except as provided in 37-60-105 and 37-60-308, no person may perform the duties of an armed private security guard or an armed private investigator in this state without having first been registered with the board and issued a registration card in the manner prescribed by this section.*

(2) Applicants for registration shall file a sworn application on a form prescribed by the board, including the same information as required of applicants for licensure in 37-60-304(2)(a) through (g), accompanied by the application fee prescribed by the board.

(3) Applicants for registration as armed private security guards shall meet the same qualifications required of applicants for licensure in 37-60-303(1)(a) through (g) and in addition to those requirements shall:

(a) complete the training requirements of a private security guard training program certified by the board and furnish the board, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(b) fulfill such other requirements as the board may by rule prescribe.

(4) Applicants for registration as armed private investigators shall meet the same qualifications required of applicants for licensure in 37-60-303(2)(a) through (h) and in addition to those requirements shall:

(a) complete the training requirements of a private investigator training program certified by the board and furnish the board, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(b) fulfill such other requirements as the board may by rule prescribe."

Section 15. Section 37-60-306, MCA, is amended to read:

"37-60-306. Unarmed guards and investigators — identification cards required — qualifications. *(1) Except as provided in 37-60-105 and 37-60-308, no person may perform the duties of an unarmed private security guard or an unarmed private investigator in this state without first making application to the board and being issued an identification card in the manner prescribed by this section.*

(2) Applicants for identification cards shall file a sworn application on a form prescribed by the board, including the same information as required of licensees in 37-60-304(2)(a) through (g), accompanied by the application fee prescribed by the board.

(3) Applicants for identification cards shall meet such qualifications as may be prescribed by the board."

Section 16. Section 37-60-307, MCA, is amended to read:

"37-60-307. Action on application. *(1) The board shall grant the application for an original or renewal license, identification card, or registration unless it finds that the applicant, branch office manager, or qualifying agent has:*

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(a) not met the qualifications of 37-60-303;

(b) practiced fraud, deceit, or misrepresentation in the application process;

(c) knowingly made a material misstatement in the application for a license;

(d) violated any of the provisions of this chapter or the rules of the board; or

(e) taken any action warranting suspension or revocation under 37-60-321.

(2) If an original or renewal license, identification card, or registration is denied, the applicant may request a hearing within 30 days after receipt of notice of denial. The hearing shall be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of commerce.

(3) Licenses, registration, or identification cards shall be granted by name for those categories of persons listed in 37-60-101(1), (2), (3), (4), (5), (8), (13), (14), (15), (18), (19), or (20), or any combination of the foregoing."

Section 17. Section 37-60-308, MCA, is amended to read:

"37-60-308. Temporary employment without registration or identification card — authority of board. *The board may, under such conditions as it shall prescribe by rule, authorize the employment by any licensee of any person for not more than 90 days who, because of his failure to register or obtain a registration or identification card in accordance with 37-60-305 or 37-60-306, could otherwise not act as a private security guard or private investigator."*

Section 18. Section 37-60-309, MCA, is amended to read:

"37-60-309. Form of license, registration, and identification card. *(1)* The license, *registration, and identification card,* shall be in such form as may be determined by the *board.*

(2) *A license shall include the name of the licensee,* the name under which the licensee is to operate, *and the number and date of the license.*

(3) *A registration or identification card shall include the name of the individual the card is issued to, a photograph of the individual, the name of the licensee employing the individual the card is issued to, a card number, and the date the card is issued."*

Section 19. **Fees.** (1) The fees prescribed by the board and collected by the department must be deposited into the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

Section 20. Section 37-60-310, MCA, is amended to read:

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"37-60-310. Display of license, registration, and identification card. *(1) A* license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) Any registrant or holder of an identification card must carry the card on his person while performing his duties and while going to and from work. Any peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown."

Section 21. Section 37-60-312, MCA, is amended to read:

"37-60-312. Annual renewal. *(1)* Licenses, *registrations, and identification cards* issued under this chapter expire at 12 midnight on *the dates prescribed by the board* if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the *board* and pay the renewal fee prescribed by this chapter.

(2) The board may refuse to renew a license, registration, or identification card for any reason for which it could refuse to grant an original application or suspend or revoke any license, registration, or identification card under 37-60-321."

Section 22. Section 37-60-314, MCA, is amended to read:

"37-60-314. Nontransferability of license — record changes. *(1) No license issued under this chapter is transferable.*

(2) A licensee shall notify the board within 5 days of any change in its officers or directors or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon such change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter."

Section 23. Section 37-60-321, MCA, is amended to read:

"37-60-321. Suspension or revocation. The *board* may suspend or revoke a license, *registration, or identification card* issued under this chapter if *it* determines that the licensee or *its* manager *or qualifying agent* or any of its officers, directors, *or* partners *or any registrant or holder of an identification card* has:

(1) made any false statement or given any false information in connection with an application for a *grant,* renewal, or reinstatement of a license, *registration, or identification card;*

(2) violated any provisions of this chapter;

(3) violated any rule of the *board* adopted pursuant to the authority contained in this chapter;

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(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon and as a result of such conviction is under state supervision;

(5) impersonated or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license, *registration, or identification card* was expired, which would be cause for suspension, revocation, or denial of an application;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee, *registrant, or holder of an identification card;*

(9) resorted to fraud, misrepresentation, or deception, in the course of business, which was not required to perform a client service; or

(10) been guilty of unprofessional conduct as defined by the rules of the board."

Section 24. **Surrender of licenses, registration, and identification cards.** (1) Whenever a license is suspended or revoked, the licensee shall within 24 hours after receiving notification of the suspension or revocation by the board surrender the license by mailing it or delivering it personally to the board.

(2) Whenever any person to whom a registration or identification card has been issued ceases employment for which the card was issued or has his card revoked or suspended by the board, he shall surrender the card to the licensee and within 5 days thereafter the licensee shall mail or personally deliver the card to the board.

Section 25. Section 37-60-402, MCA, is amended to read:

"**37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry.** (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or his representative any information he may acquire as to any criminal offense, but he may not divulge to any other person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee may knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report may be submitted to a client except by the licensee, qualifying manager, or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining

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whether or not the facts and information in the report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of a licensee may use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(5) No licensee or officer, director, partner, manager, or employee of a licensee may enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof."

Section 26. Section 37-60-403, MCA, is amended to read:

"37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the *board*."

Section 27. Section 37-60-404, MCA, is amended to read:

"37-60-404. Duty to maintain employee records. Each *employer* shall maintain a record containing such information relative to his employees as may be prescribed by the *board*."

Section 28. Section 37-60-405, MCA, is amended to read:

"37-60-405. Approval of weapons. *The weapons to be carried by registrants must be approved by the board.*"

Section 29. **Peace officer's casual employment.** A peace officer, as defined in 46-1-201, or a reserve officer, as defined in 7-32-201, is not prohibited or restricted from accepting and engaging in employment as a security guard during his off-duty hours provided that he does not advertise his services or solicit employment and further provided that the chief of his department previously approves the off-duty employment. A peace officer or reserve officer so engaged in casual employment is exempt from the provisions of [this act].

Section 30. **Regulation of uniforms, badges, and equipment.** (1) No licensee or officer, director, partner, manager, or employee of a licensee may wear, carry, or display a badge in connection with the activities of the licensee's business. However, a person employed by a licensee who holds a commission as a peace officer, as defined in 46-1-201, is exempt from this provision.

(2) The board is authorized to establish rules regulating uniforms and any emblems, patches, insignias, and devices that may be either worn or displayed on uniforms, vehicles, or equipment.

Section 31. **Penalty.** Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment of not more than 1 year, or by both such fine and imprisonment.

Section 32. **Application of act to existing businesses.** A person engaged in the business of a contract security company, a proprietary security organization, or a private investigator within this state on October 1,

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1983, shall within 6 months of that date apply to the board for a license to operate such business. Any person filing a timely application for a license may continue to engage in business pending a final determination upon the application by the board.

Section 33. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 1, apply to section 1.

(2) Sections 8, 9, 19, 24, and 29 through 32 are intended to be codified as an integral part of Title 37, chapter 60, and the provisions of Title 37, chapter 60, apply to sections 8, 9, 19, 24, and 29 through 32.

Section 34. **Repealer.** Sections 37-60-102, 37-60-311, and 37-60-313, MCA, are repealed.

Section 35. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

CHAPTER NO. 551

AN ACT REQUIRING A DETERMINATION OF LEGIBILITY FOR THE RECORDING OF DOCUMENTS BY THE COUNTY CLERK AND RECORDER AND THE ADDITION OF A STATEMENT BY THE CLERK TO DOCUMENTS CONSIDERED NOT LEGIBLE; AMENDING SECTION 7-4-2617, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2617, MCA, is amended to read:

"7-4-2617. Procedure to record documents. (1) When any instrument, paper, or notice authorized by law to be recorded is deposited for record in the office of the county clerk, as ex officio recorder, and accompanied by the required fee, he must endorse upon the same the time it was received, noting the year, month, day, hour, and minute of its reception, and the reception of the instrument must be immediately entered in the county clerk and recorder's reception book.

(2) If the printed, written, or typed words or numbers are considered by the clerk and recorder to be illegible and not legibly reproducible, the clerk and recorder must affix to the recorded document a statement that the document is illegible and not legibly reproducible.

(3) The county clerk must record said instrument without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same and with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record and must note at the foot of the record the exact time of its reception.

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(4) The county clerk must also endorse upon each instrument, paper, or notice the time when and the book and pages in which it is recorded and must thereafter deliver it, upon request, to the party leaving the same for record or to his order."

Approved April 18, 1983.

CHAPTER NO. 552

THE PERCENT-FOR-ART ACT; PROVIDING THAT AN AMOUNT NOT TO EXCEED 1 PERCENT OF STATE APPROPRIATIONS FOR BUILDING OR RENOVATING APPROPRIATE STATE BUILDINGS MAY BE USED FOR THE ACQUISITION OF VISUAL WORKS OF ART FOR SUCH BUILDINGS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Percent-for-Art Act".

Section 2. **Purpose.** The state of Montana, in recognition of its responsibility to create a more humane environment of distinction, enjoyment, and pride for all its citizens and in recognition that public art is a resource that stimulates the vitality and economy of the state's communities and provides opportunity for artists and other skilled workers to practice their crafts, declares that a portion of the funds for the construction or renovation of appropriate state buildings be allocated for the acquisition of works of art for such buildings.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Artist" means a practitioner in the visual arts generally recognized by his peers or critics as a professional who produces works of art. The term does not include the project architect, or any member of his firm, of a new state building that is to have works of art under the provisions of [this act].

(2) "New state building" means any structure to be built, remodeled, or renovated with money appropriated by the legislature that is, in the opinion of the architecture and engineering division of the department of administration, appropriate for the inclusion of works of art.

(3) "Work of art" means any work of visual art, including but not limited to a drawing, painting, mural, fresco, sculpture, mosaic, photograph, work of calligraphy, work of graphic art (including an etching, lithograph, offset print, or silk screen), craft (including crafts in clay, textile, fiber, wood, metal, plastic, or glass), or mixed media (including a collage, assemblage, or any combination of art media). The term does not include environmental landscaping.

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Section 4. **Art for new state buildings — finance.** (1) Subject to legislative allocations as provided in subsection (2), all capital project appropriations by the legislature shall include, as a part of the appropriation, an amount not to exceed 1% of the amount appropriated for the use of the Montana arts council for the acquisition of works of art for new state buildings, maintenance of works of art, and administration of [this act] as provided in subsection (3).

(2) (a) If a state building recommended for construction in the report required by Title 17, chapter 7, part 2, is also recommended as appropriate for the inclusion of works of art as provided in [section 3(2)], the report shall so state, and in addition the report shall include any recommendation made by the Montana arts council concerning the appropriateness of the building for the inclusion of works of art, the types of works of art suggested for inclusion in such building, and the anticipated cost of such suggested works of art, including costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art. The Montana arts council may submit a recommendation even if the architecture and engineering division of the department of administration has determined that a structure is not appropriate for inclusion of works of art.

(b) The legislature may, for those buildings recommended as appropriate for the inclusion of works of art, allocate an amount not to exceed 1% of the appropriated cost for use as specified in [section 4(1)].

(c) Additional funds, including separate appropriations, donations, grants, and other available governmental funds, may be used for the acquisition of works of art for new state buildings.

(3) (a) One percent of the funds received from the maximum appropriation setoff allocated by the legislature must be granted to the Montana arts council for the maintenance of art in state buildings.

(b) The administration of [this act] may be funded out of the appropriation setoff allocated by the legislature.

Section 5. **Display of works of art.** The works of art acquired under the provisions of [this act] may be an integral part of or attached to the new state building or may be displayed on the parcel of land on which the new state building is located. The works of art must be so located that they are in public view.

Section 6. **Administration — selection of works of art.** (1) The Montana arts council is primarily responsible for the administration of [this act]. The council must:

(a) submit its recommendations to the architecture and engineering division of the department of administration for inclusion in the report required by Title 17, chapter 7, part 2, concerning the appropriateness of any such building for the inclusion of works of art, a description of the types of works of art suggested for inclusion in the building, and the anticipated costs of acquisition, maintenance, and administrative expenses associated with the suggested works of art.

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(b) appoint a three-member screening committee for each new state building to recommend artists to be commissioned or completed works of art to be purchased. The committee must consist of the project architect or his designee, a professional artist, and a representative from the user agency who is a resident of the community in which the new state building is to be constructed.

(c) select; commission the artist for; review the design, execution, and placement of; and finally accept all works of art. The Montana arts council must consult with the screening committee in fulfilling the requirements of this subsection (1)(c).

(d) assist in contract negotiations with artists who are selected;

(e) ensure that works of art acquired for display under the provisions of [this act] are displayed in such a manner that they are in public view;

(f) ensure that each work of art is properly maintained and may use the funds provided for in [section 4] or any other funds available for such maintenance; and

(g) maintain a close working relationship with the artist throughout each project.

(2) No payment may be made to any artist for works of art under [this act] without prior authorization of the Montana arts council.

Section 7. **State ownership of work of art.** The state must obtain sole ownership of each work of art acquired for display under [this act], including all tangible rights and privileges, subject to the artist's right to claim authorship of the work of art.

Section 8. **[Act] not exclusive.** The provisions of [this act] are not the exclusive manner of acquiring and displaying works of art in public buildings.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective date — applicability.** This act is effective July 1, 1983, and applies only to appropriations made by the 49th legislature and subsequent legislatures.

Approved April 18, 1983.

CHAPTER NO. 553

AN ACT TO CLARIFY THE AUTHORITY OF IRRIGATION DISTRICTS TO ENGAGE IN ELECTRICAL POWER OPERATIONS; AMENDING SECTION 85-7-1961, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1961, MCA, is amended to read:

"85-7-1961. Districts organized prior to certain date — authority to continue electrical power operations. (1) An irrigation

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district or project that was organized prior to March 30, 1981, under Title 85, chapter 7, is authorized to continue all electrical power operations it conducted prior to March 30, 1981.

(2) Electrical power operations authorized by *subsection (1) of* this section include generation, distribution, and sale of electrical power and the reasonable and necessary means to carry out such operations.

(3) In addition to the authority otherwise provided in this section and Title 85, chapter 7, MCA, irrigation districts or projects organized under Title 85, chapter 7 or described in 85-7-110, may construct, install, operate, and maintain facilities to generate, transmit, and sell, as well as any associated facilities necessary to that end, electricity using the water power potential of irrigation projects or works or federally owned water impoundment projects where electric power generation facilities have not heretofore been installed and licensed under the Federal Power Act."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

CHAPTER NO. 554

AN ACT PROMOTING THE AVAILABILITY AND INVESTMENT OF DEVELOPMENT CAPITAL IN MONTANA THROUGH THE CREATION OF CAPITAL COMPANIES; PROVIDING TAX CREDITS FOR INVESTMENT IN THE COMPANIES; PROVIDING OVERSIGHT AND AUDITING REQUIREMENTS; PROVIDING THAT OFFERINGS OF THE COMPANIES ARE EXEMPT FROM SECURITIES REGISTRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Capital Company Act".

Section 2. **Declaration of policy.** (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

(b) involuntary unemployment, with its resulting burden of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of

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its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by making tax credits available to taxpayers investing in Montana capital companies;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program which gives priority to investments in capital companies in the order in which they are qualified will encourage prompt private investment in Montana businesses.

Section 3. **Purpose.** (1) The purpose of [this act] is to promote the development of the human resources and the diversification of the economy of Montana. The venture capital generated by [this act] must be used to encourage and assist the strengthening of the economy through loans, equity investments, and other business transactions for purposes of developing new small business and industry in Montana, rehabilitating existing small business and industry, and stimulating and assisting in the expansion of small business activities that promote and maintain the economic stability of the state by providing maximum opportunities for employment of Montanans and improving the standard of living of the people of Montana.

(2) [This act] is aimed at:

(a) increasing the availability of development capital in order to encourage and assist in the creation, development, and expansion of small businesses based in Montana;

(b) aiding those businesses to which risk and equity financing are not readily or fully available through traditional sources, including those owned and operated by women and minorities;

(c) developing, preserving, diversifying, expanding, and strengthening the agricultural, industrial, and business base of Montana's economy, particularly for those small businesses utilizing the state's technical, managerial, and research resources in domestic and international markets; and

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(d) providing the residents of Montana with greater opportunities to invest and participate in the economic development and potential of the state.

Section 4. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital or net worth.

(2) "Certified Montana capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the department.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means a debt or equity financing of or a purchase and leaseback financing of a Montana business that meets both of the following criteria:

(a) the business is engaged in one or more of the following activities:

(i) manufacturing;

(ii) agricultural, fishery, or forestry production and processing;

(iii) mineral production and processing, except for conventional oil and gas exploration;

(iv) recognized nonfossil forms of energy generation as defined in 15-32-102(5);

(v) transportation;

(vi) research and development of products or processes associated with any of the activities enumerated in (i) through (v) above;

(vii) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(viii) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and

(ix) tourism; and

(b) the business is a small business as defined in rules adopted by the department.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company

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under the provisions of [section 6] so that investors in the company may receive the tax credits authorized in [section 6].

Section 5. **Certification of Montana capital companies.** (1) Every 6 months, commencing January 1, 1984, or 3 months after rules are adopted to implement [this act], whichever occurs first, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company must make written application to the department on forms provided by the department. The application must contain the information required by [section 16] and such other information as the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in [section 6].

(2) The application must show that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Montana-based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company.

Section 6. **Designation of qualified Montana capital companies — tax credit.** (1) The department shall designate as qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of $200,000. A certified company seeking designation as a qualified Montana capital company must make written application to the department on forms provided by the department. The application must contain the information required by [section 16] and such other information as the department requires.

(2) The total amount of tax credits authorized for a single qualified company may not exceed $375,000. In the event the capitalization of the company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation. The total credits authorized for all companies may not exceed a total of $1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed $1 million plus any portion of the $1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The credits shall be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the department, and the department shall certify to each such company its appropriate allocation.

(3) Investors in a qualified Montana capital company are entitled to the tax credits provided for in subsection (4). Funds invested in a certified company prior to designation as a qualified Montana capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company.

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(4) Subject to the provisions of subsection (2), an individual, small business corporation, partnership, or corporate taxpayer who makes a capital investment in a qualified Montana capital company is entitled to a tax credit equal to 25% of the investment, up to a maximum credit of $25,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30 or 31. The credit for investments by a small business corporation electing to be taxed under 15-31-202 or a partnership may be claimed by the small business corporation shareholders or the partners.

(5) The tax credit allowed under subsection (4) is to be credited against the taxpayer's income tax liability for the taxable year in which the investment in a qualified Montana capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended.

(6) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 5 years of [the effective date of this act].

Section 7. **Unused investments — company penalty.** (1) If the amount invested by a taxpayer in a qualified Montana capital company is not used by the company for qualified investments as provided in subsection (2), the taxpayer is not subject to a recapture provision for any tax credit claimed by him but the company is subject to the penalty provided for in subsection (4).

(2) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base within 3 years of the date on which the certified company was designated as a qualified capital company by the department;

(b) at least 50% of its capital base within 4 years of the date on which the certified company was designated as a qualified capital company by the department; and

(c) at least 70% of its capital base within 5 years of the date on which the certified company was designated as a qualified capital company by the department.

(3) Following each annual examination, the commissioner of financial institutions shall notify the department of revenue of any companies that are not in compliance with this section.

(4) A qualified Montana capital company that fails to make qualified investments pursuant to subsection (2) shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the taxpayers investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to the qualified Montana capital company. The department of revenue may abate the

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penalty if the capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (2) and that the failure was not due to neglect on the part of the company. The department of revenue shall deposit any amount received under this subsection to the credit of the state general fund.

Section 8. **Investment reporting and recordkeeping.** (1) Each qualified Montana capital company shall report to the department on a quarterly basis:

(a) the name of each investor in the qualified Montana capital company who has applied for a tax credit;

(b) the amount of each investor's investment; and

(c) the amount of the tax credit allowed to the investor and the date on which the investment was made.

(2) The department shall provide the information contained in subsection (1) to the department of revenue on a quarterly basis.

(3) The department shall provide each investor in a qualified Montana capital company with a certificate authorizing the tax credit, and the certificate shall be submitted with each tax return requesting a credit under [section 6].

(4) Each qualified Montana capital company shall report to the department on a quarterly basis all qualified investments that the company has made. The department shall share the information with the department of revenue, in order that the provisions of [section 7] may be complied with.

Section 9. **Restriction on investment.** No more than 50% of the equity raised by a Montana capital company under [this act] may be invested in any one Montana business, and no more than 25% of the total funds raised for which tax credits were claimed pursuant to the investment credit provisions of [this act] may be invested in any one Montana business.

Section 10. **Conflict of interest.** (1) The director of the department, the commissioner of financial institutions, or a bank examiner may not have a monetary interest in or be a borrower from any Montana capital company, either directly or indirectly.

(2) A member of the investment committee of a Montana capital company who has an interest in a venture that comes before the committee for a vote shall disclose such interest and abstain from voting on investment in the venture.

Section 11. **Legislative review and oversight.** The department shall report on an annual basis to the revenue oversight committee of the legislature concerning Montana capital companies.

Section 12. **Examination.** (1) At least once a year the bank examiners of the department of commerce shall examine the books and affairs of each Montana capital company. The examination must address the methods of operation and conduct of the business of the Montana capital company to determine if the company is abiding by the purposes of [this act]

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and that the funds received by the company have been invested within the time limits required for a qualified Montana capital company in [section 7].

(2) The department of commerce may examine under oath any of the officers, directors, agents, employees, or investors of a Montana capital company regarding the affairs and business of the company. The department of commerce may issue subpoenas and administer oaths. Refusal to obey such a subpoena may at once be reported to the district court of the district in which the company is located, and the court shall enforce obedience to the subpoena in the manner provided by law.

(3) The cost of the annual review must be paid by each Montana capital company in accordance with reasonable fees assessed by the department.

Section 13. **Decertification.** (1) If the examination conducted pursuant to [section 12] discloses that a Montana capital company is not in compliance with the provisions of [this act], the department of commerce may exercise any of the powers with regard to banks granted in Title 32, chapter 1, part 5, and may seize the assets of the company and liquidate it. In the event of liquidation of the assets, any penalty imposed pursuant to [section 7 of this act] shall be included in the claims to be paid.

(2) If in the discretion of the department of commerce the action allowed under subsection (1) is not required to protect the company's investors, the department of commerce may place the company on notice that it will lose its certification as a Montana capital company within a specified period of time if the company does not come into compliance with the provisions of [this act].

(3) As long as the department acts in good faith, the department and its employees and agents may not be held civilly or criminally liable or liable upon their official bonds for action taken under this section or for any failure to act under it.

Section 14. **Application of securities law.** In lieu of registration under Title 30, chapter 10, a Montana capital company may file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for such filing or deposit.

Section 15. **State liability disclaimed.** The state of Montana may not be held liable for any damages to an investor in a Montana capital company that fails to become designated as a certified or qualified Montana capital company.

Section 16. **Application requirements.** A company applying to become either a certified or qualified Montana capital company shall include in its application evidence that it has disclosed or will disclose to all investors the following:

(1) the condition that a tax credit is not available for investment in a company until the company has been designated a qualified Montana capital company and the investor has received a certificate approving the credit from the department;

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(2) the condition that a tax credit will not be made available until the company raises at least $200,000 in capital, and has been designated a qualified capital company, and the limits on tax credits that may be authorized; and

(3) the fact that the state of Montana is not liable for damages in accordance with [section 15].

Section 17. **Rulemaking.** The department may adopt rules to implement the provisions of [this act].

Section 18. **Coordination.** (1) If either House Bill No. 100 or House Bill No. 700, including the sections of those bills creating the Montana economic development board, is passed and approved, all references to "the department of commerce" in sections 4 through 11, 16, and 17 of this act are changed to "the Montana economic development board".

(2) If section 17 of House Bill No. 100 is passed and approved, "the committee" referred to in section 11 of this act is changed to "the economic development oversight committee".

Section 19. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

CHAPTER NO. 555

AN ACT TO INCREASE THE PENALTY AND INTEREST FOR LATE PAYMENTS OF UNEMPLOYMENT CONTRIBUTIONS; AND TO PROVIDE A PENALTY FOR FAILURE TO FILE A REPORT OR RETURN; AMENDING SECTION 39-51-1301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due contributions. (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, *that are paid within 20 days after the due date* shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater. *If the contributions are not paid within 20 days after the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the contributions due, whichever is greater. All past-due contributions* shall bear interest at the rate of *18% a year, to be prorated on a daily basis.*

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(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 18, 1983.

CHAPTER NO. 556

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LICENSURE OF CESSPOOL, SEPTIC TANK, AND PRIVY CLEANING BUSINESSES; ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH REQUIREMENTS BY RULE FOR DISPOSAL SITES; PROVIDING FOR A HEARING AFTER THE DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE; PROVIDING FOR EXCEPTIONS TO THE LICENSING REQUIREMENT; PROVIDING FOR CRIMINAL PENALTIES; AMENDING SECTIONS 37-41-101, 37-41-103, 37-41-201, 37-41-202, 37-41-211, AND 37-41-212, MCA; AND REPEALING SECTIONS 37-41-102, 37-41-203, AND 37-41-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

(4) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

(5) "Septage" means waste material from cesspools, septic tanks, or privies.

Section 2. Section 37-41-101, MCA, is amended to read:

"**37-41-101. License required.** No person *may* engage in the business of cleaning cesspools, septic tanks, or privies and disposal of *septage* therefrom unless licensed by the department."

Section 3. Section 37-41-103, MCA, is amended to read:

"**37-41-103. Rulemaking power of department.** The department shall adopt necessary rules for *the implementation of* the provisions of this chapter, *including rules pertaining to:*

(1) licensure but not operation of septic tank, cesspool, and privy cleaning businesses; and

(2) requirements for temporary and permanent sites for disposal of septage."

Section 4. Section 37-41-201, MCA, is amended to read:

"**37-41-201. Application for license — form and contents.** Application for a license is made to the department on application forms *provided by the department.* The application shall *contain:*

(1) the *full* name and *business address of each applicant;*

(2) *a list of* the counties in which business is to be conducted; *and*

(3) certification by a local health officer or his designated representative in each county in which the applicant's business is to be conducted that proposed disposal sites to be used by the applicant meet all applicable state and local requirements."

Section 5. Section 37-41-202, MCA, is amended to read:

"**37-41-202. Licenses — nontransferability — fees.** (1) Licenses expire on December 31 of each calendar year. Licenses are not transferable. *If a licensee ceases to do business, the license shall be surrendered to the department.*

(2) The fee for each license is $25, payable at the time of application for license. *A federal agency, city, town, or other political subdivision is not required to pay the license fee, but such agency, including a federal agency if allowed by federal law, shall comply with all other requirements of this chapter. The department shall annually return 80% of the fees collected from a county to that county.* The state *portion of the* fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of *the county* to enforce this chapter."

Section 6. Section 37-41-211, MCA, is amended to read:

"**37-41-211. Denial, suspension, or revocation of license.** The department may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the department. *Upon denial, suspension, or revocation, the applicant or licensee may request a hearing within 30 days after receipt of a written notice of the department's action. The hearing must be held before the board and in accordance with the Montana Administrative Procedure Act.*"

Section 7. Section 37-41-212, MCA, is amended to read:

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"37-41-212. Enforcement responsibility — penalty — deposit of fines. *(1)* State and local health officers *shall enforce* this chapter.

(2) A person who violates this chapter or a rule of the department is guilty of a misdemeanor and upon conviction shall be fined not more than $500.

(3) All fines collected under this section shall be deposited in the general fund of the county in which the action is brought."

Section 8. **Exclusions.** This chapter does not prohibit the owner or lessee of the property from which the septage was removed from disposing or contracting for the disposal of his own septage upon land owned or leased by him if it does not create a nuisance or public health hazard.

Section 9. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Codification instruction.** Sections 1 and 8 are intended to be codified as an integral part of Title 37, chapter 41, and the provisions of Title 37, chapter 41, apply to sections 1 and 8.

Section 12. **Repealer.** Sections 37-41-102, 37-41-203, and 37-41-204, MCA, are repealed.

Approved April 18, 1983.

CHAPTER NO. 557

THE MONTANA HIGHWAY REVENUE BONDS ACT OF 1983; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Montana Highway Revenue Bonds Act of 1983".

Section 2. **Purpose.** The purpose of [this act] is to provide for the financing of the cost of state highway and federal-aid highway projects through the issuance of highway revenue bonds secured by a pledge and appropriation of highway revenue.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Board" means the board of examiners created under 2-15-1007.

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(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to [this act] as highway revenue bonds.

(3) "Cost", as applied to any highway project, means any cost of construction or acquisition of any part of the highway project, including but not limited to the cost of supervising, inspecting, and constructing the highway project, interest during construction and for up to 6 months thereafter, and all costs and expenses incidental thereto; the costs of locating, surveying, mapping, resurfacing, restoration, and rehabilitation; acquisition of rights-of-way; relocation assistance; elimination of hazards of railroad grade crossings; acquisition of replacement housing sites; and acquisition, rehabilitation, relocation, and construction of replacement housing; and improvements necessary to directly facilitate and control traffic flow, including grade separation of intersections, widening of lanes, channelization of traffic, and traffic control systems.

(4) "Department" means the department of highways provided for in Title 2, chapter 15, part 25.

(5) "Highway projects" means the construction, reconstruction, maintenance, and repair of federal-aid highways and state highways as such terms are defined in 60-1-103.

(6) "Highway revenues" means the revenues specified in Article VIII, section 6, of the Montana constitution as revenues from gross vehicle weight fees and excise and license taxes (except general sales and use taxes, if any) on gasoline, fuel, and other energy sources used to propel vehicles on public highways and any other revenues, taxes, or receipts credited to the highway earmarked revenue fund and the highway trust federal and private revenue account.

(7) "Outstanding bonds" means bonds issued and outstanding at any particular time but does not include bonds owned by the state, bonds that have been refunded, or bonds for the payment of which an irrevocable deposit of cash and United States government securities has been made in an amount sufficient to pay principal, interest, and redemption premium, if any, when due.

Section 4. **Highway revenue bond sinking account — deposit of bond proceeds.** (1) There is in the highway earmarked revenue fund a highway revenue bond sinking account. Subject only to the prior pledge and appropriation made by 17-5-507, the state treasurer must deposit such highway revenues as may be pledged to the payment of particular bonds, to the credit of the highway revenue bond sinking account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the highway earmarked revenue fund, except that any premiums and accrued interest received may be deposited in a separate account established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the separate account for the payment of bonds. The remainder of pledged revenues is available for authorized purposes of the department. Money deposited in such separate accounts until spent for project purposes may be pledged and appropriated for the payment of bonds, which

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are a first lien and prior charge upon such funds, and such funds may be used for payment of bonds to the extent highway revenues deposited in the highway revenue bond sinking account are not sufficient for such purpose.

(3) Interest and investment earnings on the separate accounts named in subsections (1) and (2) shall be retained in the highway earmarked revenue fund.

(4) Notwithstanding 17-6-202 and except as provided in subsection (3), interest and investment earnings on the highway earmarked revenue fund shall be credited to the general fund until July 1, 1985, and thereafter shall be retained in the highway earmarked revenue fund.

Section 5. **Pledge of highway revenues.** All or any portion of highway revenues may be pledged to the payment of the principal, interest, and redemption premium, if any, on particular issues of state highway revenue bonds, and such pledge is and remains at all times a first lien and prior charge upon such pledged highway revenues credited to the highway revenue bond sinking account, subject to a first lien and charge in favor of certain highway bonds as provided in 17-5-507 and subject to the pledge of particular highway revenues to secure particular issues of highway revenue bonds.

Section 6. **Authority to issue highway revenue bonds.** The board may issue and sell highway revenue bonds to finance the cost of highway projects, to pay the costs of issuing the bonds, and to provide for reserves, upon recommendation of the department. The state reserves the right to issue additional bonds secured equally and ratably by the pledge and appropriation of the highway revenues or separately secured by a portion of highway revenues subject only to the pledge of particular highway revenues to secure particular bonds.

Section 7. **Continuation of taxes — limit on additional highway revenue bonds.** The legislature shall provide for the continued assessment, levy, collection, and deposit into the highway earmarked revenue fund of highway revenues in amounts sufficient to pay, when due, the annual debt service charges on all outstanding highway revenue bonds. The board is authorized to include a contractual undertaking for the benefit of bondholders to this effect in the resolution or indenture under which the bonds are issued.

Section 8. **Bond anticipation notes — issued when — payment of principal and interest.** (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds, which notes are designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary or desirable to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

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(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds thereof are needed. Such notes must be authorized by the board and have such terms and provisions as may be provided by resolution of the board; however, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes) of such notes, and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as may be considered appropriate by the board or, if there has been such a delegation, the state treasurer. The board may, in its discretion but subject to the limitations contained in this section, provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board may consider appropriate.

Section 9. **Form — principal and interest — fiscal agent — bonds authorized.** (1) Each series of bonds may be issued by the board at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates or the method of determining such rate or rates, maturing at such times, not more than 40 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of a fiscal agency of the state as the board shall determine, subject to the limitations contained in [this act]. Any action taken by the board under [this act] must be approved by at least a majority vote of its members.

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(2) In all other respects the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(4) The board may employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under [this act].

(5) In connection with the issuance and sale of bonds, the board may arrange for lines of credit or letters of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for bonds issued pursuant to [this act]. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

(6) No more than $150 million of bonds issued under [this act] may be outstanding at any time. No additional bonds, other than refunding bonds, may be issued until the pledge in favor of the highway revenue bonds is satisfied and discharged.

Section 10. **Trust indenture.** In the discretion of the board, bonds issued under [this act] may be secured by a trust indenture by and between the board and a trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. Each trust indenture or an executed counterpart thereof must be filed in the office of the secretary of state. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk and recorder of the county in which the property covered by the trust indenture is located is constructive notice of its content to all persons from the time of filing, and the recording of the trust indenture or its content is not necessary.

Section 11. **Provisions for protecting bondholders.** The resolution of the board providing for the issuance of bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board, and the departments, boards, or agencies of state government in relation to the construction, reconstruction, improvement, maintenance, and repair of the highway projects financed with the proceeds of the bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. No enumeration of particular powers granted by this section impairs any general grant of power contained in [this act].

Section 12. **Personal liability — suit to compel performance.** (1) The members of the board and officers and employees of the departments, boards, or agencies of state government are not personally liable or

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accountable by reason of the issuance of or on any bond issued by the board under [this act].

(2) Any holder of bonds issued under [this act] or any person or officer who is a party in interest, subject to any applicable agreements or trust indentures, may sue to enforce and compel the performance of the bond provisions as set out in [this act].

Section 13. **Negotiability of bonds.** Bonds issued under [this act] are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

Section 14. **Signatures of board members.** In case any member of the board whose signature appears on bonds or coupons issued under this part ceases to be a member before the delivery of the bonds, his signature is nevertheless valid and sufficient for all purposes as if the member had remained in office until delivery.

Section 15. **Refunding obligations.** (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under [this act], including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of refunding obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of [this act] that relate to the issuance of the obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under [this act]. The proceeds may be applied to the purchase, redemption, or payment of the outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

Section 16. **Pledge of the state.** In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state under [this act].

Section 17. **Tax exemption of bonds — legal investments.** (1) All bonds issued under [this act], their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, estate, and gift taxes.

(2) Bonds issued under [this act] are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money.

Section 18. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

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CHAPTER NO. 558

AN ACT REQUIRING OTHER POLITICAL SUBDIVISIONS TO SHARE WITH COUNTIES IN THE COSTS OF EVEN-NUMBERED-YEAR ELECTIONS; AMENDING SECTION 13-1-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-302, MCA, is amended to read:

"13-1-302. Election costs. (1) Unless specifically provided otherwise, all costs of the *regularly scheduled* primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) Costs of elections may not include the services of the election administrator or capital expenditures.

(5) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.

(6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(7) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election."

Approved April 18, 1983.

CHAPTER NO. 559

AN ACT TO INCREASE THE REIMBURSEMENT RATE FOR SCHOOL BUS TRANSPORTATION; TO CLARIFY THAT A SCHOOL DISTRICT MAY APPROVE CERTAIN BUS MILES IN ADDITION TO APPROVED BUS ROUTES BUT MAY NOT CLAIM REIMBURSEMENT FOR THE ADDITIONAL MILEAGE; AMENDING SECTION 20-10-141, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-141, MCA, is amended to read:

"20-10-141. Schedule of maximum reimbursement by bus mileage rates. (1) The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school

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bus transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. *All bus miles traveled on routes approved by the county transportation committee are reimbursable. A district may approve additional bus miles within its own district or approved service area but may not claim reimbursement for such mileage.* Any vehicle, the operation of which is reimbursed under the rate provisions of this schedule, shall be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled shall be determined in accordance with the following schedule when the bus is used for transportation of eligible transportees:

(a) *72* cents in fiscal *1984* and *80* cents in fiscal *1985* and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than *45* children; and

(b) when the rated capacity is more than *45* children, an additional *2* cents per bus mile for each additional child in the rated capacity in excess of *45* shall be added to a base rate of *72* cents in fiscal *1984* and *80* cents in fiscal *1985* and each year thereafter per bus mile.

(3) The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of public education."

Approved April 18, 1983.

CHAPTER NO. 560

AN ACT TO ALLOW EMERGENCY ADMISSIONS TO THE STATE HOSPITAL FROM A LOCAL FACILITY THAT DOES NOT HAVE AVAILABLE SPACE TO DETAIN A PERSON WHO APPEARS TO BE SERIOUSLY MENTALLY ILL; AMENDING SECTION 53-21-129, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-129, MCA, is amended to read:

"53-21-129. Emergency situation — petition — detention. (1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and as a result of serious mental illness to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

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(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file his findings with the county attorney who, if he determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining his actions.

(3) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any county for the detention of persons held pursuant to this section. *Whenever an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility must certify to the county attorney that the facility does not have adequate room at that time.*

(4) However, before any person is transferred to the state hospital under this section, the state hospital must be notified prior to transfer and must state that a bed is available for the person."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

CHAPTER NO. 561

AN ACT TO AUTHORIZE BANKS TO HOLD ANNUAL MEETINGS ON ANY BUSINESS DAY BEFORE APRIL 15 OF EACH CALENDAR YEAR; AMENDING SECTION 32-1-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-322, MCA, is amended to read:

"**32-1-322. Board of directors — qualifications, tenure, and vacancies.** (1) The affairs of the bank shall be managed by a board of directors, not less than 3 or more than 11 in number, all of whom shall be stockholders of the bank and of whom at least two-thirds must be residents of this state. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors shall be elected for a term of 1 year at the annual meeting of the stockholders, which shall be held on any *business day before April 15* of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation may not thereby be dissolved, but an election may be held at any other time agreeable to the

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bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday of the following January or until others are elected and qualified. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in the office, that he will not knowingly violate or permit a violation of any of the provisions of this chapter, and that he is the owner in good faith of the required number of shares of stock in the bank standing in his name on the books of the bank. The oaths shall be made in duplicate, one copy of which shall be transmitted to the department and filed in its office and one copy shall be kept on file in the office of the bank.

(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board, and the directors so appointed shall hold office until the next annual election."

Approved April 18, 1983.

CHAPTER NO. 562

AN ACT PROVIDING FOR ESTABLISHMENT BY THE CHIEF OF POLICE OF THE WORK PERIOD FOR POLICE OFFICERS AND OTHER POLICE DEPARTMENT PERSONNEL; AMENDING SECTIONS 7-32-4118, 7-32-4119, AND 39-3-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4118, MCA, is amended to read:

"7-32-4118. Work period — days off duty without loss of compensation. *(1) The chief of police may establish the work period for officers and other personnel in the department and may establish a work period other than that provided in 39-3-405 for determining when an employee must be paid overtime compensation. The total hours in all work periods in a calendar year may not exceed 2,080.*

(2) Each *officer or other employee* of the police force in every city of the first and second class shall, *in each calendar year,* be given *a minimum of 104* days off duty without loss of compensation, *not including holidays, sick leave, vacation leave, or other types of compensated time off duty.*"

Section 2. Section 7-32-4119, MCA, is amended to read:

"7-32-4119. Overtime compensation. Members of police departments of cities of the first and second class, except those officers holding the rank of captain or above, are entitled to *overtime* compensation for *hours worked in excess of the work period established by the chief of police under 7-32-4118.*"

Section 3. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

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(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

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(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1); *or*

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(n) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118."

Approved April 18, 1983.

CHAPTER NO. 563

AN ACT REESTABLISHING THE BOARD OF HORSERACING UNDER EXISTING STATUTORY AUTHORITY AND RULES; CHANGING THE COMPOSITION OF THE BOARD; PROVIDING FOR AN EXECUTIVE SECRETARY TO THE BOARD AND DEFINING HIS DUTIES; REQUIRING THE BOARD TO ESTABLISH A FUND FOR RECOGNITION OF MONTANA-BRED HORSES; REVISING AND CLARIFYING PROVISIONS RELATING TO HORSERACING; AMENDING SECTIONS 2-8-103, 2-15-1881, 23-4-101, 23-4-104, 23-4-105, 23-4-201, 23-4-202, 23-4-204, 23-4-301, 23-4-302, 23-4-304, AND 23-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of horseracing created pursuant to 2-15-1881 is reestablished with its existing statutory authority and rules for 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

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(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of livestock, department of livestock, created by 2-15-3102;

(d) board of milk control, department of commerce, created by 2-15-1802;

(e) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(f) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(g) public service commission, department of public service regulation, created by 69-1-102;

(h) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(i) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

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(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates July 1, 1989: board of horseracing, department of commerce, created by 2-15-1881."

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Section 3. Section 2-15-1881, MCA, is amended to read:

"2-15-1881. Board of horseracing. (1) There is a board of horseracing.

(2) The board consists of five members appointed by the governor with the consent of the senate, who shall be citizens, residents, and qualified electors of this state. *No person holding a financial interest in a racetrack or race meet, member of a county fair board, or owner, trainer, or breeder of a racehorse is eligible for membership on the board. No member of the board may wager at any licensed racing meet in this state.*

(3) The governor *may* not appoint any member who *would have a conflict of interest during his term of appointment.* The governor shall appoint, on the basis of experience *and* qualifications *one member from each of the following districts:*

(a) first district, consisting of Blaine, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Treasure, Valley, and Wibaux Counties;

(b) second district, consisting of Big Horn, Carbon, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Sweet Grass, Stillwater, Wheatland, and Yellowstone Counties;

(c) third district, consisting of Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties;

(d) fourth district, consisting of Beaverhead, Broadwater, Deer Lodge, Gallatin, Jefferson, Lewis and Clark, Madison, Meagher, Park, and Silver Bow Counties; and

(e) fifth district, consisting of Flathead, Granite, Lake, Lincoln, Missoula, Mineral, Powell, Ravalli, and Sanders Counties.

(4) Each member shall serve for a *staggered* term of 3 years. A member may be removed from office by the governor only for cause.

(5) A board member may succeed himself upon reappointment by the governor. A vacancy on the board must be filled for the unexpired term by appointment by the governor, with the consent of the senate, as provided in this section.

(6) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 23-4-101, MCA, is amended to read:

"23-4-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-1881.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by

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this chapter and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(4) "Minor" means a person under 18 years of age.

(5) "Persons" means individuals, firms, corporations, *fair boards,* and associations.

(6) "Race meet" means *racing of* registered *horses* where the parimutuel system of wagering is used.

(7) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(8) "Board of stewards" means a board composed of three stewards who supervise racing meets."

Section 5. Section 23-4-104, MCA, is amended to read:

"23-4-104. Duties of board. The board shall adopt rules to govern *horserace* meets and the parimutuel system. These rules shall include the following:

(1) definitions;

(2) auditing;

(3) supervision of the parimutuel system;

(4) corrupt practices;

(5) supervision, duties, and responsibilities of the *executive secretary,* presiding steward, racing secretary, and other racing officials;

(6) licensing of all personnel who have anything to do with the substantive operation of racing;

(7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state; and

(8) the veterinary practices and standards which must be observed in connection with race meets;

(9) absolute responsibility of trainers for the condition of horses, regardless of the acts of third parties;

(10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction; and

(11) setting license fees commensurate with the cost of issuing a license."

Section 6. Section 23-4-105, MCA, is amended to read:

"23-4-105. Authority of board. The board shall, subject to 37-1-101 and 37-1-121, license *and* regulate *horseracing* and *review* race meets held in this state under this chapter. *If the board decides to authorize new forms of racing not currently engaged in in Montana, it shall do so after holding public hearings to determine the effects of these forms*

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of racing on the existing saddle racing program in Montana. The board should consider both economic and safety impacts on the existing racing and breeding industry."

Section 7. **Executive secretary — powers and duties — staff — prohibition on racing activities.** (1) The department shall appoint an executive secretary for the board.

(2) The executive secretary, in accordance with rules adopted by the board and provisions of this chapter, shall:

(a) supervise race meets and activities of racing officials;

(b) hire all state racing officials for the department;

(c) inspect race facilities; and

(d) perform other duties as directed by the board.

(3) The executive secretary may, subject to the approval of the board, hire staff to assist him in performing his duties.

(4) The executive secretary, a member of his staff, and any member of the executive secretary's or a staff member's immediate family are prohibited from owning, training, or having any interest in a racehorse running on a Montana track or having any financial interest in any Montana racing association. No racing official hired by the department or approved by the board may wager at a racing meet at which he presides.

Section 8. Section 23-4-201, MCA, is amended to read:

"**23-4-201. Licenses.** (1) It is unlawful for a person to hold a race meet in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file an application with the department which shall set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet shall be licensed and charged an annual fee *set by the board*, which shall be paid to the department and used for expenses of *administering this chapter*, subject to 37-1-101(6). Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) *No* license *may* be issued to a person who has failed to pay the fees, taxes, or moneys required under this chapter.

(4) Applications to hold race meets shall be submitted to the department, and the board shall act on the applications within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board *and an independent racing association* conducting race meets meet the requirements of the rules adopted by the board before granting a license.

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(6) An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board."

Section 9. Section 23-4-202, MCA, is amended to read:

"23-4-202. Penalty for violations of law — authority of board — judicial review. (1) A person holding a race meet, an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, and a person violating this chapter is guilty of a misdemeanor.

(2) The board *or, upon the board's authorization, the board of stewards of a race meet at which they officiate* may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing *as defined by rules of the board.*

(3) *As its own formal act or through an act of a board of stewards of a race meet, the* board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed *$1,000*, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed herein. *The rules may include provisions for the following:*

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 2% of exotic wagering on races to be used as a bonus for owners pursuant to 23-4-304(2), and up to 30% of the amount set aside may be used to defray administrative costs which shall be in addition to the 20% already withheld under 23-4-302;

(e) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated; and

(f) definition of exotic forms of wagering on races to be allowed.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 10. Section 23-4-204, MCA, is amended to read:

"23-4-204. Race exclusively for Montana-bred horses — bonus for winner. (1) For the purpose of encouraging the breeding in

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this state of valuable registered horses, at least one race each day at each race meet shall be limited to horses bred in this state *unless, in the board's judgment, there is an insufficient number of Montana-bred horses for such a race.* If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead.

(2) A sum equal to 10% of the first money of every purse won by a horse bred in this state shall be paid by the licensee conducting the race meet to the breeder of the horse. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus."

Section 11. Section 23-4-301, MCA, is amended to read:

"23-4-301. Parimutuel betting — other betting illegal. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) It is unlawful to conduct pool selling, bookmaking, or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system."

Section 12. Section 23-4-302, MCA, is amended to read:

"23-4-302. Distribution of deposits — breakage. Each licensee conducting the parimutuel system shall distribute all sums deposited in any pool to the winner thereof, less an amount which, *in the case of exotic wagering on races, shall not exceed 22%, and in all other races,* shall not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage"."

Section 13. Section 23-4-304, MCA, is amended to read:

"23-4-304. Gross receipts — department's percentage — collection and allocation. *(1)* The licensee shall pay to the department 1% of the gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the department within 5 days after receipt by the licensee. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance shall be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. *The licensee shall, at the same time, pay to the department all sums collected under 23-4-202(4)(d) on exotic wagering on races.*

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(2) At the end of the racing season, sums collected under 23-4-202(4)(d) must be distributed by the department, after first passing through the board's agency fund account, to the licensed owners of those Montana-bred horses finishing in the money at the meet from which the sums derived. The owner's award must be calculated as follows:

(a) divide the total amount collected under 23-4-202(4)(d) by the total amount won by Montana-bred horses;

(b) multiply the quotient derived under subsection (2)(a) by the total amount of money won by each owner's Montana-bred horses.

(3) For purposes of the owner's award under subsection (2), "owner" means the individual, partnership, corporation, person, or other entity that owns the horse at the time of entry.

(4) Licensees may not consider the sums available under 23-4-202(4)(d) when establishing purses."

Section 14. Section 23-4-305, MCA, is amended to read:

"23-4-305. Deposit of unclaimed money. Each licensee holding a race *meet* shall, within 30 days of the end of the *meet, report to the board the total face value of all unclaimed winning tickets from each* parimutuel pool. *The money from unclaimed winning tickets must be retained by the licensee for capital improvement approved by the board."*

Section 15. **Appointment of board members — terms.** (1) Within 30 days after [the effective date of this act], the governor shall appoint members to the board in compliance with 2-15-1881, as amended by [this act].

(2) One member shall serve a 1-year term, two members shall serve 2-year terms, and two members shall serve 3-year terms. Each successor to such a member shall serve a 3-year term.

Section 16. **Codification instruction.** Section 7 is intended to be codified as an integral part of Title 23, chapter 4, and the provisions of Title 23, chapter 4, apply to section 7.

Section 17. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

CHAPTER NO. 564

AN ACT TO ALLOW AN ORDER OF LIMITED EMANCIPATION TO BE GRANTED TO A YOUTH WHO IS 16 YEARS OF AGE OR OLDER AND WHO IS FOUND TO BE ABUSED, NEGLECTED, OR DEPENDENT; AMENDING SECTIONS 41-1-306, 41-3-102, AND 41-3-405 THROUGH 41-3-407, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

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(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so; or

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.

(5) "Threatened harm" means imminent risk of harm.

(6) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(8) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(9) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

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(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(10) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(11) "Supervision" means the authority granted by a youth court or by a voluntary agreement of a parent to determine the foster care placement of a child and the length of stay of a child in foster care and provide for the needs of a child under subsection (1) of 41-3-104.

(12) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(13) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older."

Section 2. Section 41-3-405, MCA, is amended to read:

"41-3-405. Investigation of parents' or guardian's financial ability. (1) Whenever a court determines a youth to be an abused, neglected, or dependent child pursuant to 41-3-404, the court shall issue an order directing the county welfare department of the county in which the petition was filed to conduct an investigation of the financial status of the child's parents or the extent of guardianship assets.

(2) *(a)* Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the child and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the child:

(i) in a foster home, child care agency, group home, or private treatment facility; *or*

(ii) as a child of limited emancipation, as may be ordered under 41-3-406.

(b) A written report of the investigation shall be filed with the clerk of court before the time fixed for the dispositional hearing.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time set for the dispositional hearing."

Section 3. Section 41-3-406, MCA, is amended to read:

"41-3-406. Dispositional hearing. (1) If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may enter its judgment making any of the following dispositions to protect the welfare of the youth:

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(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in [section 5];

(c) transfer legal custody to any of the following:

(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(e) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution, or department, it shall transmit with the dispositional judgment copies of any medical report and such other clinical, predisposition, or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected, or dependent may be committed or the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of .....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., minor of this county, was charged on the petition of ...., county attorney of .... County, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The child's guardian is .....
The child is in the custody of .....

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It is ordered that .... be committed to .... until discharged as provided by law.

Witness my hand this .... day of ...., A.D. 19...

.....
Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section."

Section 4. Section 41-3-407, MCA, is amended to read:

"41-3-407. Order for financial support. (1) Whenever a youth is placed in a foster home, child care agency, group home, or private treatment facility *or has been granted an order of limited emancipation* under 41-3-406, the court shall determine the ability of the youth's parents or guardian to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. This question of financial ability shall be considered at the dispositional hearing, and evidence concerning financial status may be introduced. In determining financial ability the court shall consider the report prepared pursuant to 41-3-405 and any other evidence introduced at the dispositional hearing.

(2) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the court may modify the order."

Section 5. **Limited emancipation.** (1) The court, after the dispositional hearing provided for in 41-3-406, may, upon the request of a youth who is 16 years of age or older, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

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(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

(g) that the youth will undergo periodic counseling with an appropriate advisor.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

(5) If no order for contribution is made under 41-3-407 and the court determines that a youth to whom limited emancipation is granted does not have sufficient funds to finance transition to limited emancipated status, the court may order the department to provide such funds, not to exceed $500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.

(6) The court, on its own motion or on the motion of any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth is failing to diligently pursue graduation from high school;

(c) the youth has violated a condition of the limited emancipation order;

(d) the best interests of the youth are no longer served by limited emancipation; or

(e) the youth has discontinued periodic counseling with approved advisors.

(7) The department shall mail a copy of this part to all high school counseling offices.

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Section 6. Section 41-1-306, MCA, is amended to read:

"41-1-306. Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute *or when he has been granted limited emancipation, including a specific right to enter into contracts, under 41-3-406 and [section 5]."*

Section 7. **Codification instruction.** Section 5 is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, apply to section 5.

Section 8. **Effective date.** This act is effective July 1, 1983.

Approved April 18, 1983.

CHAPTER NO. 565

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE LICENSING AND REGULATION OF BARBERS, BARBER APPRENTICES, AND BARBER SCHOOLS AND COLLEGES; AMENDING SECTIONS 37-30-101, 37-30-203, 37-30-301, 37-30-303, 37-30-306, 37-30-307, 37-30-402 THROUGH 37-30-404, 37-30-424, 37-30-425, AND 37-30-501, MCA; REPEALING SECTION 37-30-302, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-30-101, MCA, is amended to read:

"37-30-101. Definitions — practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) An "apprentice", under this chapter, is a person who receives instruction in an approved barber school or college and from a barber authorized to practice barbering in this state.

(3) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

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(b) cutting, *styling, coloring, or waving* the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) singeing or shampooing the hair or applying hair tonic or *bleaching or highlighting* the hair of male persons;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, *or gels* to scalp, face, *hands,* or neck.

(4) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering."

Section 2. Section 37-30-203, MCA, is amended to read:

"37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as registered barbers *or barber instructors* not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue apprentice cards and certificates of registration.

(2) The board may adopt rules for the administration of this chapter.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall receive a salary plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended."

Section 3. Section 37-30-301, MCA, is amended to read:

"37-30-301. Certificate required. *(1) Except as provided in subsection (2), a* person may not practice or attempt to practice barbering or serve or attempt to serve as a barber apprentice unless he first receives from the department a certificate of registration.

(2) The board may authorize the department to grant a temporary certificate to any person qualified to take the examination required by 37-30-305 who pays a temporary certification fee prescribed by the board. A person holding a temporary certificate may engage in the practice of barbering under the supervision of a certified barber for a period of 90 days or until the next examination scheduled by the board, whichever is longer."

Section 4. Section 37-30-303, MCA, is amended to read:

"37-30-303. Apprenticeship required — application — examination. (1) A person is qualified to receive a certificate of registration to practice barbering only *if he:*

(a) has served as an apprentice barber *as required by 37-30-305;*

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(b) has successfully *passed the* examination conducted by the department *under 37-30-305*, subject to 37-1-101, to determine his fitness to practice barbering;

(c) is at least 18 years old;

(d) is a graduate of the 8th grade; and

(e) is of good moral character.

(2) An apprentice *applicant* must file with the department an application setting forth the following information:

(a) full name and age of *the applicant*;

(b) name and place of *the licensed* barber school *or other school which he attended*;

(c) dates of attendance at *the licensed* barber school *or other school*;

(d) whether the applicant received a certificate of graduation from *a licensed* barber school *or other school*; and

(e) other information the board considers necessary.

(3) An apprentice applicant must *have graduated from a barber college or school licensed under this chapter or completed a course of study in barbering prescribed by the board of public education and* successfully *passed* an apprentice examination conducted by the department, subject to 37-1-101, and pay to the department the required fee. The department shall then issue an apprentice barbering card which expires 2 years from the date of examination."

Section 5. Section 37-30-307, MCA, is amended to read:

"37-30-307. Fees — handicapped persons exempted — other fees prohibited. (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card shall be prescribed by the board.

(2) The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate shall be prescribed by the board.

(3) A person registered as a barber or barber apprentice shall, before July 1 of each year, pay a license fee, set by the board based on clerical and administrative costs, for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before July 1 of each year, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(4) However, physically handicapped persons trained for the barber profession by the department of social and rehabilitation services and certified by that department as having *graduated from a* barber college

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licensed by the board are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(5) No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state."

Section 6. Section 37-30-306, MCA, is amended to read:

"37-30-306. Communicable disease — physician's certificate required. (1) A barber, *barber instructor,* or barber apprentice may not receive a certificate of registration or renewal until he has presented to the board of barbers a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public. A person practicing *or teaching* barbering without a certificate of registration is guilty of a violation of this chapter.

(2) It is unlawful for a barber, barber apprentice, *barber instructor,* or student of barbering to practice the occupation of a barber or do barber work while he has an infectious, contagious, or communicable disease that would endanger the health of the public.

(3) If a barber, *barber instructor,* or barber apprentice, after securing his certificate, contracts a communicable, infectious, or contagious disease endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber, *barber instructor,* or barber apprentice is no longer afflicted with the communicable, infectious, or contagious disease."

Section 7. Section 37-30-402, MCA, is amended to read:

"37-30-402. Application procedure for barber shops — investigation and inspection — hearing — grant or refusal of license. An application for a barbershop license shall be in writing and verified on a form prescribed by the board. On receipt by the department of an application for a license and on payment to the department of the initial inspection fee, the board shall have an investigation and inspection made as to the character of the applicant and, on notice and after hearing, shall report its findings to the department, which shall grant a license if the board finds that the applicant is of good character and that the proposed barbershop is equipped and will be conducted as required under this chapter. The application must be granted or refused within 30 days from the date of filing of the application or within 15 days after the hearing on the application if a hearing is held."

Section 8. Section 37-30-403, MCA, is amended to read:

"37-30-403. Facilities required for licensure — inspection. (1) Before a license is issued to conduct a barbershop, school, or college in this state, the barbershop, school, or college must be inspected by the department and approved by the board and shall meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot-water tanks shall have not less than a 2-gallon capacity with gravity pressure. Wastewater shall be disposed of through some system

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carrying it away from the building. This shall be done by sewer connections or in a manner meeting the requirements of the department of health and environmental sciences rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or colleges shall be open for inspection during business hours, to members of the department.

(3) The board shall inspect annually each barbershop, school, or college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, school, or college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop until such time as the initial inspection is completed.

(5) Barber schools and colleges must also comply with the provisions of [sections 11 and 12]."

Section 9. Section 37-30-404, MCA, is amended to read:

"**37-30-404. Barber schools — operator — license fee.** (1) A barber school or college operating in this state must have in charge a person who has had *3* years' continuous experience as a barber *and who is licensed as a barber instructor under [section 13].*

(2) The owner of the school or college shall first secure a *license* to operate granted by the board and issued by the department, on payment of an annual license fee prescribed by the board, and shall keep the *license* prominently displayed.

(3) The owner shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of *$5,000*, conditioned on the faithful compliance of the barber school or college with this chapter and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them or by their agents.

(4) All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college.

(5) On receiving students, all barber schools or colleges shall immediately apply to the department for student permits on blank forms prescribed by the board."

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Section 10. **Barber school license — application procedure.** (1) A person desiring to conduct a barber school or college must make application for the license required by 37-30-401 on forms provided by the department. The application must:

(a) include the name and address of the owners of the school and of the school itself;

(b) show that the person in charge has the experience required by 37-30-404;

(c) show that the applicant is of good moral character and possesses any education, training, and experience required by this chapter and any reasonable rules of the board;

(d) include a detailed floor plan of the school showing that it will have adequate space to conduct the activities of the school and that it will have at least two public restrooms, a storage room, a classroom, and a manager's office;

(e) include the names and addresses of the instructors;

(f) include a copy of any school rules;

(g) show that the school and its owner or manager can and will comply with the requirements of this chapter and the rules of the board; and

(h) be accompanied by the application and initial inspection fee established by the board.

(2) Upon receipt of a completed application, the department must conduct an inspection of the school to determine its compliance with 37-30-403, [section 11], [section 12], and this section. The board must issue the license if the school, its owner, and manager have:

(a) filed the bond required under 37-30-404; and

(b) complied with the requirements of this chapter and the rules of the board.

Section 11. **Barber schools — curriculum and students.** (1) A barber school or college licensed under this chapter shall require the completion by every student in not less than 11 months and not more than 15 months of 2,000 hours of instruction for graduation. Hours of training must be allocated in the following amounts to the courses or subjects specified:

(a) haircutting, 300 hours;

(b) shampooing, 150 hours;

(c) facials, 50 hours;

(d) styling, 300 hours;

(e) permanent waving, 300 hours;

(f) hair replacements, 50 hours;

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(g) scalp treatments, 50 hours;

(h) chemical straightening, 50 hours;

(i) hair coloring, 200 hours;

(j) shaving, 25 hours;

(k) sales and products knowledge, 125 hours;

(l) shop management and bookkeeping, 50 hours;

(m) state barber laws, rules, and regulations, 25 hours;

(n) business ethics and personal grooming, 25 hours; and

(o) balance to be used at the discretion of the school, 300 hours.

(2) Within the limits prescribed by subsection (1), the course of study at a school or college must be designed to prepare a student to successfully complete the examinations required by 37-30-303 and 37-30-305.

(3) A barber school or college licensed under this chapter:

(a) shall use a grading system for each student, keep a record of the attendance of each student, and require satisfactory completion of regular examinations, of which records must be kept;

(b) shall maintain the records required by subsection (3)(a) for inspection by the board;

(c) shall certify to the board a copy of a student's transcript within 3 days of his completion of 2,000 hours of study and graduation;

(d) shall furnish to a student at the time of his initial registration a statement showing the cost of tuition, books, equipment, supplies, and any other charges to be made prior to graduation;

(e) shall employ one instructor for every 15 students;

(f) may not begin instruction at a new school with less than 7 students;

(g) may not require a student to take more than 8 hours of classroom instruction a day;

(h) may not allow a student to engage in the practice of barbering upon the public until he has completed 100 hours of instruction at the school; and

(i) may not enroll any student transferring from another school until a certified transcript of the student's course work has been received and approved by the board.

Section 12. **Barber schools — operating requirements.** (1) A barber school or college licensed or to be licensed under this chapter:

(a) may not allow any person to sleep in or use for residential or any other purpose tending to make unsanitary any part of the school or college used for instructional purposes;

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(b) may not allow a barbershop to be operated in conjunction with the school or college;

(c) may not allow a student, other than a student teacher, to teach other students;

(d) may not advertise the price of any barbering service offered to members of the public;

(e) shall use any schedule of prices adopted by rule of the board;

(f) may not engage in false or deceptive advertising;

(g) may not advertise in any manner until a license has been received;

(h) shall notify the board of any change in the management of the school or college and of the discharge of any barber certified under this chapter; and

(i) may employ only instructors licensed under this chapter.

(2) It is the intent of the legislature, for the purposes of (d) and (e) of subsection (1) to avail itself of the immunity from the Sherman Antitrust Act (15 U.S.C. 1, et seq.) provided under the decision of the United States supreme court in Parker v. Brown, 317 US 341 (1943).

Section 13. **Instructor's certificate required — application and qualification — fees.** (1) Except as provided in subsection (3), no person may for a fee instruct another in the practice of barbering unless that person holds an instructor's certificate issued by the board.

(2) The board shall issue an instructor's certificate to:

(a) any person engaged as an instructor in a barber college on October 1, 1983, upon payment of the certification fee; or

(b) any person who passes the instructor's examination given by the department and pays a certification fee established by the board.

(3) This section does not apply to persons paying the annual license fee required by 37-30-424.

Section 14. **Instructor's certification examination.** (1) An instructor's examination may be administered only to those persons who are high school graduates or possess the equivalent of a high school diploma and who:

(a) have been actively and continuously engaged in the practice of barbering in this state or in any other state requiring a barber's certificate or license, under laws substantially equivalent to this chapter, for at least 3 years immediately prior to application to take the instructor's certification examination; or

(b) have completed a course in barber instructor training of at least 500 hours of instruction at a barber school or college licensed by the board under this chapter.

(2) Instructor's examinations must be held at the time and place specified by the board, but must be held at least once a year.

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(3) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours of additional instructor training at a barber school or college licensed by the board.

Section 15. Section 37-30-424, MCA, is amended to read:

"37-30-424. Fee for advanced barber training program, clinic, or seminar. Any person *not a resident of this state* conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter shall pay an annual license fee prescribed by the board to the department or a 10-day license fee prescribed by the board and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation."

Section 16. Section 37-30-425, MCA, is amended to read:

"37-30-425. Refusal, suspension, or revocation of license. The board may, after notice and opportunity for a hearing, either refuse to issue or renew or may suspend or revoke a barbershop or barber school or college license for any one or combination of the following causes:

(1) the violation of any of the provisions of 37-30-308; 37-30-403, except subsection (1)(f); *[section 11]; [section 12];* 37-30-412; 37-30-413; and 37-30-421;

(2) gross malpractice or gross incompetency;

(3) continued practice by a person knowingly having an infectious or contagious disease;

(4) advertising by means of knowingly false or deceptive statements;

(5) advertising, practicing, or attempting to practice under a trade name other than one's own;

(6) habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(7) the commission of any of the offenses described in 37-30-203."

Section 17. Section 37-30-501, MCA, is amended to read:

"37-30-501. Penalty. A person practicing the occupation of a barber *or barber instructor* without first having obtained a license under this chapter or a person knowingly employing a barber *or barber instructor* who has not obtained a license or a person who falsely pretends to be qualified to practice the occupation of a barber *or barber instructor* or a person who otherwise violates this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $25 or more than $200 or imprisoned in the county jail for not less than 10 days or more than 90 days, or both. In addition, the board may after hearing suspend or revoke a barber's *or barber instructor's* certificate of registration or license to operate a barbershop, school, or college, or both, by reason of the person willfully

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violating this chapter or persistently failing to conform to the rules adopted by the board."

Section 18. **Repealer.** Section 37-30-302, MCA, is repealed.

Section 19. **Effective date.** (1) Except as provided in subsection (2), this act is effective October 1, 1983.

(2) Section 12(1)(i) is effective October 1, 1984.

Section 20. **Applicability.** This act, except section 12(1)(i), applies to any barber school or college seeking an initial or renewal license on or after October 1, 1983.

Section 21. **Codification instruction.** Sections 10 through 14 are intended to be codified as an integral part of Title 37, chapter 30, and the provisions of Title 37, chapter 30, apply to sections 10 through 14.

Approved April 18, 1983.

CHAPTER NO. 566

AN ACT TO ALLOCATE A PORTION OF THE METALLIFEROUS MINES LICENSE TAX TO THE EARMARKED REVENUE FUND TO THE CREDIT OF THE HARD-ROCK MINING IMPACT ACCOUNT; AMENDING SECTIONS 15-1-501 AND 90-6-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of moneys from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) automobile driver's license fees under subsections (1) through (6) of 61-5-111;

(b) electric energy producer's license taxes under chapter 51;

(c) oil and gas severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes under chapter 31, except as provided in 15-31-702, shall be deposited in

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the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, excluding that allocated to the counties under 15-31-702, corporation income tax, and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code."

Section 2. Section 90-6-304, MCA, is amended to read:

"90-6-304. Account established. There is within the earmarked revenue fund a hard-rock mining impact account. Moneys are payable into this account *under [section 3] and* from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the hard-rock mining impact board."

Section 3. **Disposition of tax.** The license taxes collected under the provisions of 15-37-101 and 15-37-103 are allocated as follows:

(1) to the earmarked revenue fund to the credit of the hard-rock mining impact account, all money specifically appropriated to the account for the cost of operating the hard-rock mining impact board;

(2) to the general fund, revenues in excess of those allocated under subsection (1).

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 15, chapter 37, part 1, and the provisions of Title 15, chapter 37, part 1, apply to section 3.

Section 5. **Coordination instruction.** If House Bill 446, including the amendments to 90-6-303 and 90-6-304 relating to the administrative and operating expenses of the hard-rock mining impact board, is passed and approved, this act is void.

Section 6. **Effective date — applicability.** This act is effective on passage and approval and applies to taxes due during and subsequent to the fiscal year ending June 30, 1983.

Approved April 18, 1983.

CHAPTER NO. 567

AN ACT GENERALLY REVISING USURY LIMITS; ESTABLISHING THE MAXIMUM INTEREST RATE AT 6 PERCENTAGE POINTS ABOVE THE NEW YORK PRIME RATE; AMENDING SECTION 31-1-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-107, MCA, is amended to read:

"31-1-107. (Revived July 1, 1983) Interest rate allowed by agreement. (1) *Parties* may agree in writing for the payment of any rate

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of interest not more than *6 percentage points* per annum *above the prime rate of major New York banks as published in the Wall Street Journal edition dated 3 business days prior to the execution of the agreement*, and such interest shall be allowed according to the terms of the agreement.

(2) A loan that is not usurious when made is lawful for the duration of the loan, provided the loan agreement is not substantially changed. This subsection does not apply to loan renewals."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 18, 1983.

CHAPTER NO. 568

AN ACT TO GENERALLY REVISE THE PROVISIONS OF THE LOBBYIST DISCLOSURE LAWS; DELETING PROVISIONS DECLARED TO BE UNCONSTITUTIONAL BY THE MONTANA SUPREME COURT; CLARIFYING THE DEFINITION OF "LOBBYING"; INCREASING THE THRESHOLD AMOUNTS FOR REPORTING ENTERTAINMENT EXPENSES FROM $10 TO $25; AMENDING SECTIONS 5-7-101, 5-7-102, 5-7-208, AND 5-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-7-101, MCA, is amended to read:

"**5-7-101. Purposes of chapter — applicability.** (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make public their business, *financial, and occupational* interests, and to require disclosure of the amounts of money spent for lobbying.

(2) Nothing in this chapter subjects any citizen lobbying on his own behalf to any reporting requirements nor deprives any such citizen of the constitutional right to communicate with public officials."

Section 2. Section 5-7-102, MCA, is amended to read:

"**5-7-102. Definitions.** The following definitions apply in this chapter:

(1) "Individual" means a human being.

(2) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision thereof, or other organization or group of persons.

(3) "Public official" means any individual, elected or appointed, acting in his official capacity for the state government, but does not include those

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acting in a judicial or quasi-judicial capacity *or performing ministerial acts.*

(4) "Lobbying" includes:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members thereof by any person other than a member of the legislature or a public official acting in his official capacity; and

(b) the practice of promoting or opposing official action by any public official in the event the person engaged in such practice expends $1,000 per calendar year or more exclusive of personal travel and living expenses.

(5) (a) "Lobbyist" means any person who engages in the practice of lobbying for hire.

(b) "Lobbyist" does not include:

(i) any individual citizen acting solely on his own behalf; or

(ii) any individual working for the same principal as a licensed lobbyist, such individual having no personal contact *involving lobbying* with any public official on behalf of his principal.

(c) Nothing in this section deprives any citizen not lobbying for hire of the constitutional right to communicate with public officials.

(6) "Lobbying for hire" includes activities of any officers, agents, attorneys, or employees of any principal who are paid, reimbursed, or retained by such principal and whose duties include lobbying. When an individual is reimbursed only for his personal living and travel expenses, which together do not exceed $1,000 per calendar year, that individual shall not be considered to be lobbying for hire.

(7) "Unprofessional conduct" means:

(a) a violation of any of the provisions of this chapter;

(b) instigating action by any public official for the purpose of obtaining employment in opposition thereto;

(c) attempting to influence the action of any public official on any measure pending or to be proposed by:

(i) promise of financial support; *or*

(ii) making public any unsubstantiated charges of improper conduct on the part of any other lobbyist, any principal, or any legislator;

(d) attempting to knowingly deceive any public official with regard to the pertinent facts of an official matter or attempt to knowingly misrepresent pertinent facts of an official matter to any public official.

(8) "Principal" means any person who makes payments in excess of $1,000 per calendar year to engage a lobbyist.

(9) "Docket" means the register and reports of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

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(10) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value.

(11) "Payment to influence official action" means any of the following types of payment:

(a) direct or indirect payment to a lobbyist by a principal, as salary, fee, compensation, *or reimbursement* for expenses, *excluding personal living expenses*;

(b) payment in support of or assistance to a lobbyist or lobbying activities, including, but not limited to, the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(12) "Business" means:

(a) any holding or interest whose fair market value is greater than $1,000, in any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed individual, holding company, joint stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; *and*

(b) present or past employment from which benefits, including retirement allowances, are received.

(13) "Commissioner" means the commissioner of political practices.

(14) "Elected official" means a public official holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including, but not limited to legislators, public service commissioners, and district court judges. The term "official-elect" shall also apply only to such offices."

Section 3. Section 5-7-208, MCA, is amended to read:

"5-7-208. Principals to file accountings. (1) A principal subject to this chapter shall file with the commissioner an accounting of payments made *for the purpose of lobbying.*

(2) If such payments are made solely to influence legislative action, such accounting shall be made:

(a) before February 16th of any year the legislature is in session and shall include all payments made in that calendar year prior to February 1;

(b) before the 16th day of the calendar month following any calendar month in which the principal spent $5,000 or more and shall include all payments made during the prior calendar month; and

(c) within 60 days following adjournment of such session and shall include all payments made during such session, except as has previously been reported.

(3) If such payments are made to influence any other official action by a public official or made to influence such other action and legislative action, such accounting shall be made:

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(a) before February 16th of the calendar year following such payments and shall include all payments made during the prior calendar year; and

(b) before the 16th day of the calendar month following any calendar month in which the principal spent $5,000 or more and shall include all payments made during the prior calendar month.

(4) If no such payments are made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a) above, the principal shall file a report stating such.

(5) Each accounting filed under this section shall:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

(iv) travel expenses;

(v) salaries and fees, including allowances, rewards, and contingency fees;

(vi) entertainment, including all foods and refreshments;

(vii) telephone and telegraph; and

(viii) other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring *$25* or more benefit to any public official *when the payment was made for the purpose of lobbying*; and

(ii) each separate payment conferring $100 or more benefit to more than one public official, regardless of individual benefit *when the payment was made for the purpose of lobbying*, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee which amounts to $250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which such payment was earmarked;

(d) list each official action which the principal or his agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against such action; and

(e) be kept by the commissioner for a period of 10 years."

Section 4. Section 5-7-302, MCA, is amended to read:

"5-7-302. Unprofessional conduct — prohibited compensation. No lobbyist or principal shall engage in or directly or indirectly authorize any unprofessional conduct."

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Section 5. **Coordination instruction.** (1) If Senate Bill No. 339, including a section of that bill amending 5-7-101, is passed and approved, the following language contained in 5-7-101 as amended in section 1 of this act is stricken: "to require elected officials to make public their business, financial, and occupational interests,".

(2) If Senate Bill No. 339, including a section of that bill amending 5-7-102, is passed and approved, the amendments to 5-7-102(12) contained in section 2 of this act are void.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

CHAPTER NO. 569

AN ACT PROVIDING SPECIFIC AUTHORITY FOR THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE DEPARTMENT OF INSTITUTIONS TO CERTIFY PROFESSIONAL PERSONS SERVING DEVELOPMENTALLY DISABLED PERSONS; REQUIRING THE DEPARTMENTS TO ADOPT RULES GOVERNING THAT CERTIFICATION; AMENDING SECTION 53-20-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals, which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills

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which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a *licensed* medical doctor; or

(b) a person *who has been certified as provided for in [section 3] by the department of social and rehabilitation services and the department of institutions.*

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating, and habilitating the developmentally disabled on an inpatient basis, including the Boulder River school and hospital and the Eastmont training center. The term does not include a group home, foster home, or halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this part.

(10) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health."

Section 2. **Certification of professional persons required.** No person may act in a professional capacity as provided for in this part unless he is a professional person as defined in 53-20-102.

Section 3. **Certification of professional persons.** (1) The department of social and rehabilitation services and the department of institutions shall certify professional persons for purposes of this part.

(2) The department of social and rehabilitation services and the department of institutions shall adopt rules governing the certification of professional persons. The rules must establish the appropriate combination of education, skills, and experience necessary for certification and set forth qualifications developed by reference to recognized national standards in the field of developmental disabilities, such as standards published by the

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accreditation council for services for mentally retarded and other developmentally disabled persons (ACMRDD), standards published in Title XIX of the Social Security Act, and other similar standards.

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, part 1, apply to sections 2 and 3.

Approved April 18, 1983.

CHAPTER NO. 570

AN ACT TO REGULATE GAME ANIMAL FARMS, GAME BIRD FARMS, AND FUR FARMS; REPEALING SECTIONS 87-4-401 THROUGH 87-4-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 18], the following definitions apply:

(1) "Department" means the department of fish, wildlife, and parks.

(2) "Game animals" means game animals as defined in 87-2-101 that are not the lawful property of any private person.

(3) "Game farm" means the enclosed land area upon which game farm animals may be kept for purposes of obtaining, rearing in captivity, keeping, and selling game animals or parts of game animals, as authorized under [sections 1 through 18].

(4) "Game farm animal" means a privately owned caribou, bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana or any other cloven-hoofed ungulate as classified by the department.

(5) "Game farm shooting license" means the license required under [section 16] for a game farm operator to hunt the game farm animals indigenous to the state of Montana on his game farm.

(6) "Person" means an individual, firm, corporation, association, or partnership.

Section 2. **License required.** No person may operate a game farm in this state without first obtaining a game farm license from the department.

Section 3. **Department jurisdiction — applicability of livestock laws and rules.** (1) The department has primary jurisdiction over game farms.

(2) A game farm licensee must also comply with all applicable laws and rules administered by the department of livestock.

Section 4. **Application for license — limitations on issuance.** (1) Any person desiring to obtain a game farm license shall make written application to the department. The application shall specify:

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(a) the applicant's name;

(b) the applicant's address;

(c) the exact legal description of the land upon which the game farm is to be located, together with the nature of the applicant's title thereto, whether in fee, under lease, by contract for deed, or otherwise;

(d) the species of game animals proposed to be kept or reared on the game farm;

(e) the type of fencing contemplated;

(f) the source from which the applicant intends to acquire the game animals;

(g) if the applicant is not a Montana resident, the name and address of a Montana resident designated by the applicant as his local agent;

(h) if the applicant is a corporation, the full names and addresses of all stockholders owning more than 10% of the stock in the corporation; and

(i) information demonstrating that the applicant is responsible.

(2) A game farm license shall be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced the land upon which the game farm is to be located. The fencing must be designed and constructed to prevent the escape of the species of game farm animals kept on the land and to prevent the entry of the same species of game animals.

(3) Within 60 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If required fencing has not been completed, the department shall approve the application subject to completion of the fencing. If the application is denied, the department shall specify the reasons for denial.

Section 5. **Removal of game animals.** (1) If game animals are present on the land which is to be covered by a game farm license, the license shall be issued but must be conditioned upon the applicant complying with this section.

(2) Before the fence surrounding any such land may be closed, all game animals must to the extent possible be driven therefrom by the applicant, at the applicant's expense and under the direction of a representative of the department.

(3) If at the time the license is issued all game animals cannot be removed from the licensed land, the applicant and a representative of the department shall decide the approximate number of remaining game animals of each indigenous species. This number is the "base number".

(4) The department may remove the base number of game animals from the game farm by trapping them within 120 days from the date the number was determined.

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(5) If the department decides not to remove the game animals or if some game animals were not successfully removed by trapping, the public must be granted access to harvest those game animals during a special hunt set for that purpose during the next regularly scheduled hunting season. All administrative costs incurred by the department in arranging the special hunt or providing for hunting on the applicant's land during the regular season must be reimbursed by the applicant.

(6) After compliance with this section, any animals from the base number that remain and their progeny belong to the licensee, and the licensee may deal with them as provided for in [sections 1 through 18].

Section 6. **License and renewal fees — deposit of fees.** (1) The department shall charge an initial game farm license fee of $100 and for each year thereafter shall charge an annual renewal fee of $25.

(2) The fees must be deposited in the earmarked revenue fund for the use of the department for purposes of [sections 1 through 18].

Section 7. **Term of license — nontransferability.** (1) A game farm license expires on January 31 of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license upon payment of the renewal fee if the licensee has not violated any provisions under which the license was granted.

(2) A game farm license is nontransferable.

Section 8. **Inspection.** (1) Upon receipt of an application for a game farm license, the department shall inspect the land proposed to be covered by the license.

(2) After issuance of a game farm license, the department may inspect the game farm or the licensee's game farm books on a scheduled basis or on such other reasonable basis as may be determined necessary.

Section 9. **Game farm animals as private property.** (1) All game farm animals lawfully raised on a licensed game farm are the private property of the licensee.

(2) The licensee may acquire, breed, grow, keep, pursue, capture, kill, use, sell, or dispose of the game farm animals and their progeny in any quantity, at any time of year, and in any manner, as long as he complies with the requirements of [sections 1 through 18].

(3) Before allowing hunting of any game farm animals on a game farm, the game farm licensee must obtain a game farm shooting license from the department.

(4) The laws applicable to game animals do not apply to game farm animals raised on a licensed game farm.

Section 10. **Transportation and sale of game farm animals.** (1) Whenever the licensee of a licensed game farm sells or disposes of one or more game farm animals, he shall, at the same time, deliver to the recipient or otherwise cause to accompany each such game farm animal an

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invoice or bill of sale signed by the licensee or his agent stating the number of the game farm license, the date of disposition, the species, the number disposed of, and the name and address of the transferee. This invoice or bill of sale authorizes transportation of the game farm animal or animals being sold, transferred, or disposed of.

(2) Within a reasonable time after disposition, the licensee or his agent shall mail postpaid a duplicate of the invoice or bill of sale to the department of livestock and the department.

Section 11. **Sale of game parts, meats, and byproducts.** (1) A game farm licensee may sell or otherwise dispose of the carcass, parts, or byproducts of a properly identified game farm animal taken from a game farm, only upon preparing an invoice or bill of sale and attaching a copy of it to the carcass or container and keeping a copy for his records. Upon the attaching of the invoice or bill of sale to the carcass, parts, or byproducts of the game farm animal, the same may be transported within the state to the transferee named on the invoice or bill of sale.

(2) The licensee may sell game farm animals for meat upon compliance with all applicable health laws.

Section 12. **Records and reporting.** (1) Each game farm licensee shall keep and maintain for 3 years accurate written records of all purchases, transfers, and sales of game farm animals showing:

(a) the number of each species of game farm animal purchased by the game farm licensee and from whom purchased;

(b) the number of each species of game farm animal transferred or sold, the date of transfer or sale, and the name and address of the person to whom the transfer or sale was made; and

(c) identification of each game farm animal purchased, transferred, or sold.

(2) On or before January 31 of each year, the game farm licensee shall file a report with the director, showing the number and species of game farm animals on hand as of January 1 and the number and species of game farm animals bought or sold during the past year.

Section 13. **Unlawful capture.** No person may capture, take, or otherwise acquire any game animal in this state for use on a game farm except as provided in [section 5].

Section 14. **Escape from game farm — effect.** If a game farm animal escapes from a game farm, the game farm licensee shall immediately notify the department of its escape and shall make every reasonable effort to recapture it. If the escaped animal cannot be recaptured within a reasonable time, it becomes the property of the state.

Section 15. **Taxation.** All game farm animals raised on a game farm may be assessed as personal property of the owner.

Section 16. **Game farm shooting license.** (1) Before a game farm licensee may hunt any game farm animals indigenous to the state of Montana on his game farm, he must first obtain a game farm shooting license.

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(2) The department shall issue to a game farm licensee a game farm shooting license on an annual basis for the number of animals that he wishes to hunt.

(3) The department shall issue individual tags to the game farm licensee at a charge of $15 a tag. The tags must contain such information as the department requires. A tag must be attached to each animal immediately after it is killed and must accompany the animal until it is taken to its final destination.

Section 17. **Rulemaking.** (1) The department may adopt and enforce only such rules as are necessary to implement the provisions of [sections 1 through 18].

(2) The rules may address but are not limited to classifying of cloven-hoofed ungulates, fencing requirements, reporting requirements, transportation and importation, identification, sale of animal parts, the care and maintenance of game farm animals, and game farm shooting licenses.

Section 18. **Revocation of license.** (1) A game farm license may be revoked for failure to operate the game farm according to the provisions of [sections 1 through 18] or rules adopted under [sections 1 through 18].

(2) Upon discovery of a violation, the department shall give notice of the violation to the licensee, with a statement of a specific time in which the violation must be corrected.

(3) Upon failure of the licensee to correct the violation, the department may institute revocation proceedings. If the department institutes revocation proceedings, it shall provide reasonable notice and opportunity for a hearing to the licensee. After hearing and upon proof of violation, the department may revoke the game farm license.

Section 19. **Current licenses valid.** (1) A game farm having a valid license on October 1, 1983, shall receive a game farm license.

(2) A game bird farm having a valid license on October 1, 1983, shall receive a game bird farm license.

(3) A fur farm having a valid license on October 1, 1983, shall receive a fur farm license.

Section 20. **Game birds defined.** For purposes of [sections 20 through 35], the following definitions apply:

(1) "Game birds" means all birds defined as game birds in 87-2-101, except that the only pheasants included are ring-necked pheasants, and quail are not included.

(2) "Game bird farm" means an enclosed area upon which game birds may be kept for purposes of obtaining, rearing in captivity, keeping, and selling game birds or parts of game birds as authorized under [sections 20 through 35].

Section 21. **Exemption.** [Sections 20 through 35] do not apply to a person who owns, controls, or propagates game birds for purposes other

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than sale or conveyance of game birds or parts thereof and who notifies the department and receives its written authorization and exemption.

Section 22. **Game bird farm license required.** Except as provided in [section 21], no person may own, control, or propagate game birds unless he holds a current game bird farm license from the department.

Section 23. **Application for game bird farm license — limitation on issuance.** (1) A person desiring to obtain a game bird farm license shall make a written application to the department. The application must specify:

(a) the name of the applicant;

(b) his address;

(c) the species of game bird and any plans to propagate them;

(d) the legal description of the lands to be included;

(e) the type of fence or enclosure that the applicant contemplates erecting;

(f) the source of game birds; and

(g) for a nonresident owner, the name and address of a local resident agent.

(2) (a) A game bird farm license shall be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced or otherwise enclosed the place where such game bird farm is to be located.

(b) Any game bird farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 30 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If the required fencing or enclosure has not been completed, the department shall approve the application subject to the fencing or enclosure being completed. If the application is denied, the department shall specify the reasons for denial.

Section 24. **License and renewal fee — deposit of fees.** (1) Game bird farm license and annual renewal fees must be set by department rule.

(2) The fees must be deposited in the earmarked revenue fund for the use of the department for purposes of [sections 20 through 35].

Section 25. **Term of permit — conditions — changes in operation.** (1) A game bird farm license is valid only for the license year for which it is issued. The licensee shall apply for renewal annually, and the department shall renew the license if the licensee has not violated any provision under which the license was granted.

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(2) The licensee shall notify the department of any proposed changes in the species managed or in the size or location of the enclosure prior to the institution of such change.

Section 26. **License nontransferable.** A game bird farm license is nontransferable.

Section 27. **Inspection.** Upon receipt of an application, the department shall inspect the game bird farm facilities and shall thereafter inspect the facilities and the records required to be kept by such farm on a scheduled basis or on such other reasonable basis as may be determined necessary.

Section 28. **Game farm birds as private property.** All birds lawfully raised in a licensed game bird farm are the private property of the licensee, and the licensee may sell or transfer such birds as private property.

Section 29. **Transportation of birds.** Any birds purchased for use on a game bird farm or any birds raised on a game bird farm may be transported only in compliance with Title 81, chapter 2, part 7, and applicable administrative rules.

Section 30. **Sale of meat.** A licensee may sell game farm birds or parts thereof only in compliance with all health laws applicable to the sale of game meat.

Section 31. **Records and reporting.** (1) Each licensee shall keep accurate records of the number and species of birds purchased, transferred, or sold and the name of each person to whom or from whom such birds were purchased, transferred, or sold.

(2) On or before January 31 of each year, each licensee shall file a report with the director, showing the number and species of birds on hand on January 1 and the number and kinds of birds purchased, transferred, or sold during the past year. All records described in this section must be kept for not less than 3 years.

Section 32. **Rulemaking.** The department may adopt and enforce only such rules as are necessary to implement the provisions of [sections 20 through 35]. The rules may address but are not limited to fencing requirements, reporting requirements, the care and maintenance of birds held by game bird farm operators, and licensing requirements for applicants.

Section 33. **Release of birds.** Game bird farm licensees may release birds into the wild only with the prior approval of the director.

Section 34. **Field trials — permits.** (1) As used in this section, "field trial" means an examination to determine the ability of dogs to point, flush, or retrieve game birds.

(2) No person may conduct a field trial unless he has received a permit under this section. Applicants for a permit to conduct a field trial must make application to the director upon a form furnished by the department for that purpose. The application must be signed and sworn to by the

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applicant, stating the applicant's name and address, the name and address of any national affiliate, the place for the field trial clearly defined, the date or dates of the proposed field trial, whether live birds are to be used, and any other information required by the director to determine the advisability of granting permission for the proposed field trial. The application must state that if a permit is granted, the applicant will carefully flush all wild game birds from fields used for the field trial each day before the field trial begins and will not permit dogs to run free in fields that have not been carefully flushed. The application must be presented to the director not less than 20 days prior to the date proposed for the field trial.

(3) The director may refuse any application that he determines is not in the best interests of the protection, preservation, propagation, and conservation of game birds in this state. Any denial by the director of such application must state the reasons therefor and must be mailed to the applicant within 10 days of receipt of the application.

(4) No applicant receiving a permit to conduct a field trial may violate or authorize violation of any of the terms of the permit.

(5) All live game birds used in a field trial must be tagged before being planted or released and may be planted or released only in the presence of a representative of the department. If an untagged bird is shot during any field trial, the person to whom the permit was issued must immediately replace it with a live bird.

(6) (a) Dogs may be trained in open fields at any time without permission of the director only if:

(i) no live game birds are killed or captured during training; and

(ii) the training is more than 1 mile from any bird nesting or management area or game preserve.

(b) A person may train dogs with a method that will kill birds acquired from a game bird farm only after receiving a written permit from the department and only in compliance with the terms of the permit.

Section 35. **Revocation of license.** (1) A game bird farm license may be revoked for failure to operate the game bird farm according to provisions of [sections 20 through 35] or rules adopted under [sections 20 through 35].

(2) Upon discovery of a violation, the department shall give notice of such violation to the licensee, with a statement of a specific time by which the violation must be corrected.

(3) Upon failure of the licensee to correct the violation, the department may institute revocation proceedings. If the department institutes revocation proceedings, it shall provide reasonable notice and opportunity for a hearing to the licensee. After hearing, upon proof of violation, the department may revoke the game bird farm license.

Section 36. **Definition.** For purposes of [sections 36 through 48], the following definitions apply:

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(1) "Furbearer" means a marten or sable, otter, muskrat, fisher, bobcat, lynx, wolverine, or beaver. The term does not include fox or mink.

(2) "Fur farm" means the enclosed land area upon which furbearers may be kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers as authorized under [sections 36 through 48].

Section 37. **Fur farm license required — applicability.** (1) Except as provided in subsection (2), no person may own, control, or propagate furbearers unless he holds a current fur farm license from the department.

(2) [Sections 36 through 48] do not apply to the ownership, control, or propagation of furbearers if the ownership, control, or propagation is not for the sale or conveyance of furbearers or parts thereof.

Section 38. **Application for permit.** (1) Any person desiring to obtain a fur farm license shall make a written application to the department. The application must specify:

(a) the name of the applicant;

(b) his address;

(c) species of furbearers and any plan to propagate them;

(d) the legal description of the lands to be included;

(e) the type of fence that the applicant contemplates erecting;

(f) the source of furbearers.

(2) (a) A fur farm license shall be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced the place where such fur farm is to be located.

(b) Any fur farm owned by a nonresident must have a resident agent who is responsible for the daily operation of the fur farm and who is authorized by the nonresident owner to receive service of process.

(3) Within 30 days of receiving the application, the department shall notify the applicant of its decision to approve or deny the application. If required fencing has not been completed, the department shall approve the application subject to the fencing being completed. If the application is denied, the department shall specify the reasons for denial.

Section 39. **License and renewal fee — deposit.** (1) Fur farm license and annual renewal fees must be set by department rule.

(2) The fees must be deposited in the earmarked revenue fund for the use of the department for purposes of [sections 36 through 48].

Section 40. **Term of permit — conditions — changes in operation.** (1) A fur farm license is valid only for the license year in which it is issued. The licensee shall apply for renewal annually, and the department shall renew the license if the licensee has not violated any provision under which it was granted.

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(2) The licensee shall notify the department of any proposed changes in the species managed or in the size or location of the enclosure prior to the institution of such change.

Section 41. **License nontransferable.** A fur farm license is nontransferable.

Section 42. **Inspection.** Upon receipt of an application for a license, the department shall inspect each fur farm and thereafter shall inspect each fur farm and the records required to be kept by such fur farm on a scheduled basis or on such other reasonable basis as may be determined necessary.

Section 43. **Furbearers as private property.** All furbearers lawfully raised on a licensed fur farm are the private property of the licensee, and the licensee may sell or transfer such furbearers as private property.

Section 44. **Transportation of furbearers.** Any furbearers purchased for use on a fur farm or any furbearers raised on a fur farm may be transported only in compliance with Title 81, chapter 2, part 7, and applicable administrative rules.

Section 45. **Sale of furs.** A fur farm owner who desires to sell furs shall comply with all the requirements of Title 87, chapter 4, part 3.

Section 46. **Records and reporting.** (1) Each licensee shall keep accurate records of the number and species of furbearers purchased, transferred, or sold and the name of each person to whom or from whom such furbearers were purchased, transferred, or sold.

(2) On or before January 31 of each year, each licensee shall file a report with the director, showing the number and species of furbearers on hand on January 1 and the number and species of furbearers purchased, transferred, or sold during the past year. All records described in this section must be kept for not less than 3 years.

Section 47. **Rulemaking.** The department may adopt and enforce only such rules as are necessary to implement [sections 36 through 48]. The rules may address but are not limited to fencing requirements, reporting requirements, the care and maintenance of the furbearers held by fur farm operators, and licensing requirements for applicants.

Section 48. **Revocation of license.** (1) A fur farm license may be revoked for failure to operate the fur farm according to the provisions of [sections 36 through 48] or rules adopted under [sections 36 through 48].

(2) Upon discovery of a violation, the department shall give notice of such violation to the licensee, with a statement of a specific time by which the violation must be corrected.

(3) Upon failure of the licensee to correct the violation, the department may institute revocation proceedings. If the department institutes revocation proceedings, it shall provide reasonable notice and opportunity for a hearing to the licensee. After hearing, upon proof of violation, the department may revoke the fur farm license.

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Section 49. **Fee limitation for multiple licenses.** If a person is issued more than one license under [sections 1 through 48], the total assessment for initial fees or for renewal fees for all licenses issued to such person may not exceed the amount of the largest individual license fee.

Section 50. **Waiver of initial fee.** No initial license fee may be assessed against any person who held a game farm, game bird farm, or fur farm permit on October 1, 1983, unless there is a break in licensing of more than 1 year.

Section 51. **Repealer.** Sections 87-4-401 through 87-4-405, MCA, are repealed.

Section 52. **Codification instruction.** Sections 1 through 18 and 20 through 49 are intended to be codified as an integral part of Title 87, and the provisions of Title 87 apply to sections 1 through 18 and 20 through 49.

Approved April 18, 1983.

CHAPTER NO. 571

AN ACT CREATING A LIVESTOCK CRIMESTOPPERS PROGRAM WITHIN THE DEPARTMENT OF LIVESTOCK; APPROPRIATING FUNDS FOR THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] may be cited as the "Livestock Crimestoppers Act".

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Commission" means the livestock crimestoppers commission created in [section 3].

(2) "Department" means the department of livestock created in Title 2, chapter 15, part 31.

(3) "Program" means the livestock crimestoppers program created under [section 6].

Section 3. **Livestock crimestoppers commission.** (1) There is a livestock crimestoppers commission.

(2) The commission consists of five members appointed by the chairman of the board of livestock. The members are:

(a) the administrator of the brands enforcement division, or his designee;

(b) a member of the board of livestock, or his designee;

(c) a law enforcement official; and

(d) two members of the public, appointed at large.

(3) The commission shall elect a chairman from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the commission.

(6) The commission is allocated to the department of livestock for administrative purposes only as provided in 2-15-121.

Section 4. **Compensation.** Members of the commission may receive no salary but must be paid expenses incurred while on official business, as provided for in 2-18-501 through 2-18-503.

Section 5. **Functions of commission.** The commission shall recommend to the department:

(1) the names of individuals to be rewarded for providing information used in detecting and combating livestock-related crimes;

(2) the amount of any reward recommended; and

(3) means for promoting the program.

Section 6. **Powers and duties of department.** (1) The department shall:

(a) create, maintain, and promote a statewide livestock crimestoppers program in order to assist law enforcement agencies in detecting and combating livestock-related crimes; and

(b) consider the commission's recommendations and take action on them.

(2) The department may:

(a) advise and assist in the creation and maintenance of local programs;

(b) encourage the channeling of information from the programs to law enforcement agencies;

(c) foster the detection of livestock-related crimes by the public;

(d) encourage the public, through a reward program or otherwise, to provide information that assists in the prosecution of livestock-related crimes;

(e) promote the state and local programs through the media; and

(f) accept gifts, grants, or donations for the furtherance of the program and spend these in compliance with the conditions of the gifts, grants, or donations.

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Section 7. **Rules.** The department may adopt rules necessary to administer the provisions of [this act].

Section 8. **Confidentiality.** The identity of a person submitting information under the program and any information that may lead to the disclosure of such identity is confidential.

Section 9. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 2, chapter 15, part 31.

Section 10. **Appropriation.** There is appropriated to the department of livestock for the biennium ending June 30, 1985, $20,000 from the money deposited in the earmarked revenue fund established in 81-4-606 for the purpose of administering the program provided for in this act.

Section 11. **Effective date.** This act is effective July 1, 1983.

Approved April 18, 1983.

CHAPTER NO. 572

AN ACT PROVIDING FOR ESTABLISHMENT OF FIRE HYDRANT MAINTENANCE DISTRICTS IN CITIES AND TOWNS; PROVIDING FOR METHODS OF ASSESSING THE DISTRICTS FOR COSTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization to create fire hydrant maintenance districts.** Whenever the public convenience and necessity may require, one or more fire hydrant maintenance districts may be established in a city or town.

Section 2. **Resolution of intention to create a fire hydrant maintenance district.** (1) Before creating any fire hydrant maintenance district, the city council shall pass a resolution of intention to do so.

(2) The resolution must designate the district number, describe the boundaries of the district, provide an estimate of the cost of any improvement and the cost of maintaining district fire hydrants, and the proportion of such costs to be assessed against the property within the district.

Section 3. **Notice of resolution of intent to create a fire hydrant maintenance district.** (1) Upon passing the resolution required by [section 2], the council shall give notice of such passage. The notice must be published for 5 days in a daily newspaper or, if there is no daily newspaper, in one issue of a weekly newspaper in the city or town. If no newspaper is published in the city or town, notice must be given by posting the notice for 5 days in three public places in the city or town. A copy of the notice must be mailed to the last-known address of every person, firm, or corporation having property within the proposed district on the same day the notice is first published or posted.

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(2) The notice must describe the general character of the proposed improvement, state the estimated cost of the improvement and the cost of maintaining the hydrants within the district for the first year, and designate the time when and place where the council will hear and pass upon all protests against the establishment of the improvement or the creation of the district. The notice must refer to the resolution on file in the office of the city clerk for a description of the boundaries.

Section 4. **Protest against creation of fire hydrant maintenance district.** At any time within 15 days after the date of the first publication or posting of the notice of passage of the resolution of intention, any owner of property who would be liable for district assessments may make a written protest against the proposed improvement or the creation of the district, or both. The protest must be delivered, in writing, to the clerk of the city council, who shall endorse thereon the date of its receipt by him.

Section 5. **Consideration of protest.** (1) At the next regular meeting of the city council after the expiration of the 15-day protest period provided for in [section 4], the city council shall proceed to hear and pass upon all protests, and its decision is final and conclusive. If the council finds that the owners of a majority of the property proposed to be assessed have protested on grounds of cost of the improvement, no further proceedings may be taken on the subject of such proposed improvement district for a period of at least 6 months from the date of expiration of the 15-day protest period.

(2) In determining whether or not sufficient protests have been filed to prevent further proceedings, property owned by a county, city, or town is considered the same as other property in the district.

(3) The city council may adjourn and reconvene the hearing on protests from time to time.

Section 6. **Resolution to create fire hydrant maintenance district.** (1) The city council has jurisdiction to order the proposed improvements if:

(a) no protests have been delivered to the clerk of the city council within the 15-day protest period provided for in [section 4]; or

(b) protests have been found by the city council to be insufficient in number to halt further proceedings and such protests have been heard on their merits and denied.

(2) Before ordering the proposed improvements, the city council shall pass a resolution creating the fire hydrant maintenance district in accordance with the resolution of intention previously introduced and passed by the council.

Section 7. **Resolution for assessment — area, frontages, and taxable valuation options.** The city or town council shall estimate, as nearly as practicable, the entire cost of installing and maintaining fire hydrants each year and the portion thereof to be assessed against the

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property within the district. Before the first Monday in October, the council must pass and finally adopt a resolution levying and assessing the property within the district. The city or town council, for the purpose of making the assessment, shall adopt one of the following methods:

(1) The council may assess the cost of fire hydrant installation and maintenance against the entire district, each lot or parcel of land within the district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places.

(2) The council may assess the cost of fire hydrant installation and maintenance against the entire district, each lot or parcel of land within the district bordering or abutting on the streets where fire hydrants are located to be assessed in its lineal proportion to the total lineal feet bordering or abutting on such streets.

(3) If the city council determines that the area, frontage, or combination options are inequitable, it may assess the cost of fire hydrant installation and maintenance against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost that its taxable valuation, including improvements, bears to the taxable valuation of the entire district.

Section 8. **Collection method — utility options — resolution of assessment.** The city council may assess the costs of fire hydrant maintenance through a resolution of assessment or it may collect the costs by assessing them along with water and sewer fees.

Section 9. **Preexisting districts.** A fire hydrant maintenance district established prior to July 1, 1983, is not subject to any provision of [this act] except [section 7].

Section 10. **Effective date.** This act is effective July 1, 1983.

Approved April 18, 1983.

CHAPTER NO. 573

AN ACT TO PROHIBIT A STATE AGENCY FROM EXPENDING DEFERRED REVENUE FOR CURRENT FISCAL YEAR OPERATIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Limitations on spending deferred revenue.** No agency, including any unit of the university system, may expend deferred revenue for current fiscal year operations. For purposes of this section, "deferred revenue" means funds received in one fiscal year but properly allocable and recorded as revenue in the subsequent fiscal year.

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 18, 1983.

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CHAPTER NO. 574

AN ACT TO AMEND THE LAWS RELATING TO LICENSING AND REGISTRATION OF RADIOACTIVE MATERIALS AND DEVICES; AMENDING SECTION 75-3-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-3-202, MCA, is amended to read:

"75-3-202. Licensing and registration. (1) The department *may* provide by rule for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. The rules shall provide for amendment, suspension, or revocation of licenses pursuant to 75-3-401 and 75-3-403.

(2) Each application for a specific license shall be in writing and shall state such information as the department by rule may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualification of the applicant as the department considers reasonable and necessary to protect the occupational and public health and safety. The department may, at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the department considers necessary in order to determine whether the license should be granted, denied, modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require an application or statement to be made under oath or affirmation.

(3) Each license shall be in such form and contain such terms and conditions as the department may by rule prescribe.

(4) No license issued pursuant to the provisions of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license may be assigned or in any manner disposed of.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this chapter.

(6) The department may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the department.

(7) The department is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of the users will not constitute a significant risk to the health and safety of the public.

(8) Rules promulgated pursuant to this chapter may provide for recognition of such other state or federal licenses as the department considers

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desirable, subject to such registration requirements as the department prescribes."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

CHAPTER NO. 575

AN ACT CHANGING METHODS OF PROVIDING COMMUNITY COLLEGE SERVICES OUTSIDE OF PRESENT DISTRICTS BY AUTHORIZING THE CREATION OF COMMUNITY COLLEGE SERVICE REGIONS UPON APPLICATION BY THE GOVERNING BODY OF A COUNTY, MUNICIPALITY, OR ELEMENTARY OR HIGH SCHOOL DISTRICT; REQUIRING A SERVICE PLAN AND APPROVAL OF THE REGION ELECTORATE, THE COMMUNITY COLLEGE BOARD OF TRUSTEES, AND THE BOARD OF REGENTS; ALLOWING A PROPERTY TAX MILL LEVY TO FUND REGIONAL COMMUNITY COLLEGE SERVICES; PROVIDING THAT ANNEXATION TO AN EXISTING COMMUNITY COLLEGE DISTRICT REQUIRES THE TERRITORY TO BE ANNEXED TO BE WITHIN A COUNTY CONTIGUOUS TO THE DISTRICT; ALLOWING TRUSTEES DISCRETION IN CALLING AN ANNEXATION ELECTION; AMENDING SECTIONS 20-15-231 AND 20-15-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Community college service regions — creation.** (1) The governing body of an elementary school district, high school district, county, or municipality not within a community college district may designate itself a community college service region as provided in this section.

(2) A service region may be designated only if, within 12 months preceding any designation, the following conditions are met:

(a) the service plan required by subsection (3) is available;

(b) the board of trustees of the community college district that will offer services within the region has approved the designation;

(c) the electors within the region have approved the designation by a majority of votes cast on the question in an election held on a general election day; and

(d) the board of regents has approved the designation.

(3) (a) At least 90 days prior to the granting of any of the approvals listed in subsections (2)(b) through (d), a written plan must be made available which:

(i) details the services the community college district will offer within the region;

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(ii) details who will be eligible to use the services and the charges that will be made to users;

(iii) indicates the facilities that will be used to house the services;

(iv) lists the direct and indirect costs of the services and the apportionment of those costs between the community college district and the governing body designating the service region;

(v) estimates the number of persons expected to use the services within the region; and

(vi) estimates the mill levy necessary to fund the service region.

(b) The plan may be revised jointly by the region governing body, board of regents, and the board of trustees of the community college district as such revision may be necessary.

(4) A designation is effective for 5 years and after 5 years is effective unless rescinded by a majority of electors casting votes on the question in an election held on any general election day following expiration of the 5-year period. The question on rescission must be put on the ballot when requested at least 90 days prior to the election by the governing body designating the service region, by the community college board, or by a petition signed by 20% of the registered electors within the service region. The rescission is effective at the end of the first full academic year following the election rescinding the district designation.

Section 2. **Tax levy for community college service region.** A governing body designating a community college service region as provided in [section 1] may levy a tax on all real and personal property within the region at a rate required to finance the services offered by a community college district for the region. The levy is in addition to any other levies allowed by law and is not subject to any statutory or charter limitations on levies. The levy must be made at the same time and in the same manner as the general levy of the political subdivision designating the region is made, and the revenues generated thereby must be collected at the same time and in the same manner. Within 30 days of collection, the appropriate revenues must be transmitted to the participating community college district.

Section 3. Section 20-15-311, MCA, is amended to read:

"20-15-311. Funding sources. The annual operating budget of a community college district shall be financed from the following sources:

(1) the estimated revenues to be realized from student tuition and fees, except those related to community service courses as defined by the board of regents;

(2) a mandatory mill levy on the community college district;

(3) the 1-mill adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

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(5) an optional voted levy on the community college district that shall be submitted to the electorate in accordance with general school election laws;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses as defined by the board of regents shall be considered restricted to a specific purpose;

(8) income from a political subdivision that is designated a community college service region under [section 1]."

Section 4. Section 20-15-231, MCA, is amended to read:

"**20-15-231. Annexation of territory of districts to community college district.** (1) Whenever 10% of the registered electors of an elementary district or districts of *a* county *that is contiguous to the existing community college district* petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district *may* order an annexation election in the area defined by the petition. Such election shall be *held on the next general election day.*

(2) The election shall be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election, except that the board of trustees of the community college shall perform the requirements of the board of regents and there shall not be an election of the board of trustees of the community college.

(3) The proposition on the ballot shall be as follows:

Shall school districts .... be annexed to and become a part of the Community College District of ...., Montana?

☐ FOR annexation.

☐ AGAINST annexation.

(4) To carry, the proposals to annex must receive a majority of the total votes cast thereon. Upon receipt of the certified results of the election from the elementary districts encompassed in the proposed area to be annexed, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution shall be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and, upon such filing, the area to be annexed shall then become a part of the community college district."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

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CHAPTER NO. 576

AN ACT TO EXTEND AND AMEND THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, as hereby amended, is extended to bonds issued and proceedings taken prior to *[the effective date of this act]*."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1983.

CHAPTER NO. 577

AN ACT PROVIDING THAT WHEN A WITNESS IS GIVEN IMMUNITY AND COMPELLED TO TESTIFY OR PRODUCE EVIDENCE, THE TESTIMONY, EVIDENCE, OR INFORMATION DERIVED FROM IT MAY NOT BE USED AGAINST HIM IN A CRIMINAL PROSECUTION; DELETING PROVISIONS THAT THE WITNESS MAY NOT BE PROSECUTED FOR TRANSACTIONS HE TESTIFIES ABOUT, BUT PROVIDING THAT WHEN THE PROSECUTOR DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, HE MAY GRANT THE WITNESS IMMUNITY FROM PROSECUTION FOR SUCH TRANSACTIONS; AMENDING SECTIONS 30-10-304, 30-14-221, 46-4-305, AND 46-15-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-304, MCA, is amended to read:

"30-10-304. Investigations and subpoenas. (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

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(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no *compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal case. Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.*"

Section 2. Section 30-14-221, MCA, is amended to read:

"**30-14-221. Investigations.** (1) The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this part, shall at all reasonable times have access to any evidence concerning a person being investigated or proceeded against that relates to any matter under investigation or in question and the right to copy such evidence. The department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) Upon application by the department in a case of contumacy or refusal to obey a subpoena issued to a person, a district court of this state, within the district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has

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jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; *but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal prosecution. Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.*"

Section 3. Section 46-4-305, MCA, is amended to read:

"**46-4-305. Self-incrimination and immunity.** (1) No person subpoenaed to give testimony pursuant to this part may be required to make any statement or produce any evidence which may incriminate him. The attorney general or the county attorney may, with the approval of the justice or judge who authorized the issuance of the subpoena on behalf of the state, grant any person subpoenaed immunity from *the use of any compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence against that person in any criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby.* After being granted immunity, no person may be excused from testifying on the grounds that his testimony may incriminate him. The immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(2) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law."

Section 4. Section 46-15-311, MCA, is amended to read:

"**46-15-311. Compelling testimony or production of evidence — immunity.** Before or during trial in any judicial proceeding, a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, *no compelled testimony or evidence or any information directly or indirectly derived from*

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such testimony or evidence may be used against the witness in any criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section."

Approved April 19, 1983.

CHAPTER NO. 578

AN ACT AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO CERTIFY MENTAL HEALTH PROFESSIONAL PERSONS AND GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; AMENDING SECTION 53-21-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

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(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person *who has been certified as provided for in [section 3] by the department.*

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(13) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the Warm Springs state hospital."

Section 2. **Certification of professional persons required.** No person may act in a professional capacity as provided for in this part unless he is a professional person as defined in 53-21-102.

Section 3. **Certification of professional persons.** (1) The department shall certify professional persons as defined in 53-21-102(10)(b) for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons as defined in 53-21-102(10)(b).

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

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(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification.

Section 4. **Codification instruction.** Sections 2 and 3 are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to sections 2 and 3.

Approved April 19, 1983.

CHAPTER NO. 579

AN ACT TO TRANSFER RESPONSIBILITY FOR PREPARATION OF THE STATEWIDE COST ALLOCATION PLAN TO THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION FROM THE BUDGET DIRECTOR; AMENDING SECTION 17-3-110, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-110, MCA, is amended to read:

"**17-3-110. Statewide cost allocation plan.** The director *of the department of administration* shall annually prepare a statewide cost allocation plan distributing service agency indirect costs among the grantee agencies, in accordance with principles and procedures established by federal regulations and guidelines."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1983.

CHAPTER NO. 580

AN ACT TO HELP FARMERS AND RANCHERS OBTAIN CREDIT AT LOWER INTEREST RATES FOR AGRICULTURAL PURPOSES; TO CREATE THE MONTANA AGRICULTURAL LOAN AUTHORITY; TO PROVIDE AN INCOME TAX DEDUCTION FOR CERTAIN LAND SALES TO BEGINNING FARMERS; AND TO PROVIDE FOR LEGISLATIVE REVIEW.

WHEREAS, obtaining sufficient financing to begin a farm or ranch operation in Montana is increasingly difficult; and

WHEREAS, beginning farmers experience great difficulty in repaying loans under high interest rates and with low market prices for agricultural products; and

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WHEREAS, the agricultural loan programs administered by the Montana Department of Agriculture are inadequate to meet the real needs of the state; and

WHEREAS, the federal Farmers Home Administration's farm ownership loan program is also inadequate to the real needs of the state; and

WHEREAS, low interest rate financing for beginning farmers is not available in the private sector; and

WHEREAS, the value of family farms to the economic, social, and political well-being of the state is worthy of legislative action and support.

THEREFORE, it is the purpose of this act to assist beginning farmers with financial support and encouragement by making low interest rate loans available to eligible farmers and by providing incentives to retiring farmers who sell their land to eligible beginning farmers.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Agricultural loan authority — allocation — composition — quasi-judicial status.** (1) There is an agricultural loan authority.

(2) The authority consists of nine members, appointed by the governor as provided in 2-15-124. The members shall be appointed as follows:

(a) one officer from a commercial lending institution;

(b) one fruit farmer or vegetable farmer;

(c) two livestock farmers;

(d) two grain farmers;

(e) one officer from a farm credit association;

(f) the director of the department of agriculture; and

(g) one public member who is not engaged in farming or affiliated with a commercial lending institution or farm credit association.

(3) The authority is designated a quasi-judicial board for purposes of 2-15-124.

(4) The authority is allocated to the department of agriculture for administrative purposes only as provided in 2-15-121.

(5) In compliance with the state pay plan, the department shall provide all staff and services to the authority which the authority in conjunction with the department determines to be necessary for the purposes of administering the authority's programs. The department shall assess the authority for reasonable costs.

(6) A member of the authority may not be considered to have a conflict of interest under the provisions of 2-2-201 merely because the member is a stockholder, officer, or employee of a lending institution that may participate in the authority's programs.

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Section 2. **Short title.** [Sections 2 through 28] may be cited as the "Montana Agricultural Loan Authority Act".

Section 3. **Definitions.** (1) As used in [sections 2 through 28], the following definitions apply:

(a) "Agricultural land" means land actively devoted to agricultural use as defined in 15-7-202.

(b) "Authority" means the agricultural loan authority provided for in [section 1].

(c) "Bonds" means bonds or bond anticipation notes issued by the authority under the provisions of [sections 2 through 28].

(2) References to the authority's property, revenues, or assets apply only to property, revenues, and assets generated by the Montana agricultural loan authority program, not those owned or generated by any other program or property over which the authority exercises general authority, direction, and control.

Section 4. **Agricultural loan authority — general powers.** The authority may:

(1) retain professional consultants and advisers;

(2) adopt rules governing its procedures;

(3) purchase agricultural loans made by financial institutions;

(4) issue bonds, in accordance with [section 10], necessary to provide funds for implementing [sections 2 through 28];

(5) invest any funds generated by sale of bonds in the permissible investments outlined in 17-6-211 until such time as the funds are needed for any of the authority's other functions; and

(6) use the assistance and services of the farmers home administration, the production credit association, the federal land bank, or private lenders in approving loans for issuance of bonds.

Section 5. **Loan agreements — general provisions.** (1) Each loan approved by the authority for issuance of a bond must include a loan agreement providing a payment schedule that may not exceed 30 years.

(2) The agreement must specify a reasonable rate of interest, which rate may be a variable rate provided the method of determination is contained in the loan agreement.

(3) Loans approved by the authority for issuance of a bond may be secured by any liens or collateral the financial institution considers necessary.

(4) The money received under a loan agreement may be used for:

(a) acquisition of farm or ranch land;

(b) a down payment on the acquisition of farm or ranch land; or

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(c) acquisition or construction of depreciable property used in the operation of a farm or ranch.

Section 6. **Immediate repayment.** If an applicant who has obtained the approval of the authority for the issuance of a bond to fund his loan for the acquisition of farm or ranch land sells the land for which the loan was made to any person, firm, or corporation other than his spouse, children, or corporation wholly owned by them, the loan must be repaid in full.

Section 7. **Qualifications of applicants.** (1) To be eligible for a loan approved by the authority for issuance of a bond, an applicant must:

(a) declare his intention to maintain his residence in Montana during the length of the loan; and

(b) have been approved by a financial institution.

(2) Applications for loans to be approved by the authority for issuance of bonds may be submitted by individuals, partnerships, associations, or joint ventures. All persons involved in the application must meet the requirements of subsection (1). Corporations, as defined in 35-1-102, may not apply.

Section 8. **Evaluation of applicants.** (1) The authority shall by rule establish:

(a) procedures and standards for evaluating applications for loans to be approved by the authority for issuance of bonds; and

(b) a system for evaluating the applicants, considering the following criteria:

(i) the applicant's net worth, which may not exceed $250,000;

(ii) the applicant's access to livestock and machinery;

(iii) the applicant's inability to secure adequate financing for purchase of agricultural land from other sources at an interest rate that will allow a reasonable prospect for repayment;

(iv) the applicant's training and experience in agriculture;

(v) the applicant's prospects for succeeding in an agricultural operation on the land proposed for purchase; and

(vi) any other factors it may prescribe.

(2) The authority shall select the best qualified and most deserving applicants from among those applying for approval of loans for issuance of bonds.

(3) The authority may seek the advice of such lenders as the farmers home administration, the production credit association, the federal land bank, private lenders, or similar organizations in Montana and coordinate its program through these organizations.

Section 9. **Purchase of loans.** The authority may purchase loans and make advance commitments to purchase loans from a financial institution

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at prices and upon terms and conditions established pursuant to [sections 5 through 8] and rules promulgated by the authority.

Section 10. **Issuance of bonds — credit of the state not pledged.** (1) The authority may issue bonds of the state of Montana in a principal amount it determines necessary to provide sufficient funds for achieving any of the purposes of the Montana agricultural loan authority program, including the payment of interest on bonds, establishment of reserves to secure the bonds, and all other expenditures of the authority incident to the program.

(2) Each issue of its bonds is an obligation of the authority, payable out of any revenues, assets, or money generated by the Montana agricultural loan authority program. The authority shall manage its loans so that the bonds are repaid by the revenue generated by the program. The full faith and credit and taxing powers of the state are not pledged for the payment of bonds issued by the authority under the provisions of [sections 2 through 28].

(3) The bonds must be authorized by resolution of the authority, bear a date, and mature at times the authority determines. A bond may not mature more than 60 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The bonds of the authority may be sold at public or private sale, at prices determined by the authority.

(4) The resolution shall specify:

(a) the rate of interest of the bonds;

(b) the denomination of the bonds;

(c) whether the bonds shall be in coupon or registered form and registration privileges, if any;

(d) the manner and place of execution;

(e) the manner, place, and medium of payment; and

(f) the terms of redemption.

(5) The total amount of bonds outstanding at any one time may not exceed $200 million.

Section 11. **Provisions of bond resolutions or trust indentures.** A resolution or trust indenture authorizing any bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues or the property of the authority to secure the payment of the bonds or any issue thereof, subject to existing agreements with bondholders;

(2) pledging all or any part of the assets of the authority, including mortgages and obligations securing them, to secure the payment of the bonds;

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(3) specifying the use and disposition of the gross income from mortgages owned by the authority and payment of principal of mortgages owned by the authority;

(4) the setting aside of reserves or sinking funds in the hands of trustees, paying agents, or other depositories and the regulation and disposition of the reserves;

(5) limiting the purpose to which the proceeds of the sale of the bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(7) specifying the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) limiting the amount of money to be expended by the authority for its operating expenses;

(9) vesting in a trustee, as the authority determines, property, rights, powers, and duties in trust;

(10) defining the acts or failures to act that will constitute a default in the obligations and duties of the authority to the bondholders and providing for the rights and remedies, consistent with the laws of the state and the provisions of [sections 2 through 28], of the bondholders if a default occurs, including as a matter of right the appointment of a receiver; and

(11) specifying any other matters that in any way affect the security or protection of the bondholders.

Section 12. **Validity of pledge.** A pledge made by the authority is valid and binding from the time the pledge is made. The revenues or property pledged and thereafter received by the authority is immediately subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. The resolution, trust indenture, or any other instrument by which a pledge is created need not be recorded.

Section 13. **Personal liability.** The authority members and department members are not personally liable for any debt incurred by the authority.

Section 14. **Purchase of bonds — cancellation.** The authority, subject to existing agreements with bondholders, may from any funds available for that purpose purchase bonds of the authority, which shall thereupon be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment thereon, if the bonds are then redeemable; or

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(2) the redemption price applicable on the first date after purchase upon which the bonds become subject to redemption plus accrued interest to that date, if the bonds are not then redeemable.

Section 15. **Trust indenture.** In the discretion of the authority, the bonds may be secured by a trust indenture between the authority and a corporate trustee, which may be a trust company or bank having the power of a trust company within or without the state.

Section 16. **Negotiability of bonds.** Bonds issued by the authority are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

Section 17. **Continuing validity of authority members' signatures.** If any authority member whose signature appears on bonds or coupons ceases to be a member before the delivery of the bonds, his signature continues to be valid and sufficient for all purposes.

Section 18. **Accounts of the authority.** There is an agricultural loan authority account in the bond proceeds and insurance clearance fund provided for in 17-2-102. All funds from the proceeds of bonds issued under [sections 2 through 28], fees and other money received by the authority, money appropriated by the legislature for the use of the authority in administering [sections 2 through 28], and money made available from any other source for the use of the authority must be deposited in the agricultural loan authority account except as otherwise provided by law. All funds deposited in the agricultural loan authority account are continuously appropriated to and may be expended by the authority for the purposes authorized in [sections 2 through 28].

Section 19. **Reserve funds and appropriations.** (1) The authority shall pay into one or more capital reserve accounts any:

(a) money appropriated and made available by the state for the purpose of the fund;

(b) proceeds of sale of bonds to the extent provided in the resolutions of the authority authorizing their issuance or in any trust indenture securing their repayment; and

(c) other money that may be available to the authority for the purpose of such a fund from any other source.

(2) All amounts held in a capital reserve account must be used solely for the payment of principal, interest, and a redemption premium with respect to bonds secured in whole or in part by the account. Funds in an account may not be withdrawn at any time in an amount that reduces the amount of the account to less than the minimum capital reserve requirement established for the account except for the purpose, with respect to bonds secured in whole or in part by the account, of making payment, when due, of principal, interest, or redemption premiums for the payment of which other money pledged is not available.

Section 20. **Refunding obligations — sale.** Refunding obligations issued as provided in 90-6-121 may be sold or exchanged for outstanding obligations issued under [sections 2 through 28]. The proceeds may be

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applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds to the payment of outstanding obligations, the proceeds may be invested as provided in Title 17, chapter 6, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them.

Section 21. **Refunding obligations — issuance.** The authority may provide for the issuance of refunding obligations to refund any obligations then outstanding that have been issued under [sections 2 through 28], including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of [sections 2 through 28] that relate to the issuance of obligations.

Section 22. **Tax exemption of bonds.** Bonds issued by the authority under [sections 2 through 28] and their transfer and income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for inheritance, estate, and gift taxes. The authority is not required to pay recording or transfer fees or taxes on instruments recorded by it.

Section 23. **Income tax deduction for land sale to beginning farmers.** A landowner who sells land consisting of 80 acres or more to a beginning farmer at 9% or less interest on a long-term contract is entitled to a reduction in his taxable income in an amount equal to 100% of any income or capital gain, or both, realized and otherwise subject to state income taxes from the sale, up to a maximum of $50,000, provided the transaction is first approved by the authority for this purpose.

Section 24. **Pledge against impairment of contracts.** In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will in no way impair the obligations of any agreement between the authority and the holders of notes and bonds issued by the authority.

Section 25. **Annual audit.** The authority's books and records must be audited at least once each year by the legislative auditor or by a contract auditor as directed by the legislative audit committee. The cost of the audit shall be paid by the authority.

Section 26. **Report.** The department shall transmit to the governor and to each member of the legislature at least 30 days before each regular legislative session a report:

(1) detailing the operations of the agricultural loan authority program since the adjournment of the last legislature; and

(2) containing a financial statement showing the program's assets and liabilities.

Section 27. **Powers to be interpreted broadly.** The powers enumerated in [sections 2 through 28] must be interpreted broadly to effectuate the purposes of the authority and may not be construed as a limitation of powers.

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Section 28. **Legislative review required.** The agricultural loan authority program must be reviewed by the legislature at the third regular legislative session following the first sale of bonds under the provisions of [section 10] to determine whether the program should continue. However, this section does not, in itself, terminate the program, and any existing commitments incurred by the authority are not affected by this review.

Section 29. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 2, chapter 15, part 30, and the provisions of Title 2, chapter 15, part 1, apply to section 1.

(2) Sections 2 through 28 are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to sections 2 through 28.

Section 30. **Severability.** If a portion of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 19, 1983.

CHAPTER NO. 581

AN ACT TO GENERALLY REVISE CRIMINAL PENALTIES; INCREASING THE DOLLAR AMOUNT REQUIRED TO BE INVOLVED IN A CRIME BEFORE PENALTIES FOR THAT CRIME ARE INCREASED; INCREASING TO 180 DAYS THE TIME PERIOD THE COURT MAY ORDER THE DEFENDANT TO BE CONFINED IN JAIL AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE; PROVIDING THAT AS A CONDITION OF A DEFERRED OR SUSPENDED SENTENCE, THE COURT MAY ORDER THE DEFENDANT TO PAY THE COST OF SUCH CONFINEMENT; AMENDING SECTIONS 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-316, 45-6-317, 45-6-325, 45-7-210, AND 46-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-101, MCA, is amended to read:

"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

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(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of *$300*, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 2. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

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(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance, as defined in 53-3-101, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person convicted of the offense of theft of property not exceeding *$300* in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding *$300* in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(6) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 3. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he purposely and knowingly fails to return such property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding *$300* in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding *$300* in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 4. Section 45-6-311, MCA, is amended to read:

"45-6-311. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if he knowingly or purposely:

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(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding *$300* in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding *$300* in value shall be fined not more than 2 ½ times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 5. Section 45-6-316, MCA, is amended to read:

"**45-6-316. Issuing a bad check.** (1) A person commits the offense of issuing a bad check when, with the purpose of obtaining control over property or to secure property, labor, or services of another, he issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds *$300*, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 6. Section 45-6-317, MCA, is amended to read:

"**45-6-317. Deceptive practices.** (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting his financial condition for the purpose of procuring

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a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card which has expired provided the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds *$300*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 7. Section 45-6-325, MCA, is amended to read:

"45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers such document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

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(4) A person convicted of the offense of forgery shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds *$300*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both."

Section 8. Section 45-7-210, MCA, is amended to read:

"45-7-210. False claims to public agencies. (1) A person commits an offense under this section if he purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractor authorized to allow or pay claims presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds *$300*, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 9. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding *180* days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

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(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)*(xi)*.

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(5) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended."

Approved April 19, 1983.

CHAPTER NO. 582

AN ACT REQUIRING OIL AND GAS PRODUCERS REGULARLY PAYING ROYALTIES BY CHECK, DRAFT, OR ORDER TO PROVIDE THE ROYALTY OWNER WITH A RECORD, ACCOMPANYING EVERY ROYALTY PAYMENT, OF CERTAIN MATTERS PERTAINING TO PRODUCTION AND PAYMENT OF ROYALTIES; PROVIDING A PENALTY AND MAKING THAT PENALTY APPLICABLE TO CORPORATIONS; AMENDING SECTIONS 45-2-311 AND 82-10-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Payment of royalties — form of record required.** (1) An oil and gas producer paying royalties by check, draft, or order shall include with every such payment a form showing the following matters relating to that payment:

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(a) the name of the royalty owner to whom the payment is made;

(b) the date of the check, draft, or order;

(c) any royalty owner identification number used by the producer for such royalty owner;

(d) the month and year during which production occurred for which payment is being made;

(e) any number used to identify the lease under which production occurred;

(f) the type of product produced;

(g) barrels of oil and/or cubic feet of gas for which payment is made;

(h) the amount and type of all taxes withheld;

(i) the net value of production; and

(j) the royalty owner's net value.

(2) Any person purposely and knowingly violating the provisions of subsection (1) is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $1,000.

Section 2. Section 45-2-311, MCA, is amended to read:

"45-2-311. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor and is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, *or [section 1]* or by another statute which clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

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(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity."

Section 3. Section 82-10-102, MCA, is amended to read:

"**82-10-102. Remedy not exclusive.** The remedy provided for *in 82-10-101* is in the nature of a special remedy additional to and not a substitute for other remedies given by law to owners of royalties in lands of the character specified, and all acts or parts of acts in conflict with the provisions of *that section* shall not apply in actions authorized and provided for by *that section.*"

Section 4. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 82, chapter 10, part 1.

Approved April 19, 1983.

CHAPTER NO. 583

AN ACT TO IMPOSE A PENALTY ON FOREIGN CORPORATIONS THAT TRANSACT BUSINESS IN THIS STATE WITHOUT A CERTIFICATE OF AUTHORITY; AMENDING SECTION 35-1-1004, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-1004, MCA, is amended to read:

"**35-1-1004. Transacting business without certificate — disabilities and liabilities.** (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court in this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in this state until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this state.

(3) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and

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received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter, plus *a penalty of $5 for each day it transacted business in this state without a certificate of authority. The total penalty shall not exceed $1,000.* The *county attorney for any county in which a foreign corporation is transacting business without a certificate of authority may* bring proceedings to recover all amounts due this state under the provisions of this section. *Any money collected in such proceedings shall be paid to the state general fund.*"

Approved April 19, 1983.

CHAPTER NO. 584

AN ACT EXEMPTING CERTAIN ARMORED MOTOR VEHICLES FROM LAWS REGULATING MOTOR CARRIERS; AMENDING SECTION 69-12-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-102, MCA, is amended to read:

"**69-12-102. Scope of chapter — exemptions.** (1) Except as provided in 69-12-201(1)(f), this chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and

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wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances;

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill; *or*

(j) armored motor vehicles used exclusively for the transportation of coins, currency, silver bullion, gold bullion, and other precious metals, precious stones, valuable paintings, and other items of unusual value requiring special handling and security.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Approved April 19, 1983.

CHAPTER NO. 585

AN ACT REVISING AND CLARIFYING THE DEFINITION OF MONTHLY COMPENSATION FOR A PART-PAID FIREFIGHTER EMPLOYED BY A SECOND-CLASS CITY FOR THE PURPOSE OF CALCULATING BENEFITS UNDER THE FIREFIGHTERS' UNIFIED RETIREMENT ACT; AMENDING SECTION 19-13-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Administrator" means the public employees' retirement division of the department of administration.

(2) "Board" means the retirement board described in 2-15-1009.

(3) "Credited service" means the aggregate of a member's prior service and membership service.

(4) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

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(5) "Employer" means any city that is of the first or second class or that elects to join this plan under 19-13-108.

(6) "Final average salary" means the monthly compensation of a member hired on or after July 1, 1981, averaged over the last 36 months of his active service or, if he has not been a member that long, over the period of his membership.

(7) "Firefighter" means a person employed as a full- or part-paid firefighter by an employer.

(8) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(9) "Fund" means the agency account in the state treasury system designated for the use of the plan.

(10) "Member" means a person who is employed by an employer as a full- or part-paid firefighter or who is entitled to a retirement allowance by virtue of his service to an employer as a firefighter.

(11) "Member contributions" means the total of the deductions from a member's compensation made during a period of active membership under this chapter or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(12) "Membership service" means a period of employment with an employer occurring after July 1, 1981, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(13) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of credited service.

(14) "Monthly compensation" means:

(a) for a full-paid firefighter, the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for his service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in

lieu of sick leave, paid *on July 1 of each year* to all newly confirmed, *full-paid* firefighters employed by cities of the second class.

(15) Any reference to "municipality", "city", or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(16) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for his service as a firefighter.

(17) "Plan" means the municipal firefighters' retirement system created by this chapter.

(18) "Prior plan" means the fire department relief association plan of a city that elects to join the plan under 19-13-108 or the fire department relief association plan of a city of the first or second class.

(19) "Prior service" means a period of employment as a firefighter for which credit was granted to a member under a prior plan and has been transferred to this plan.

(20) "Retirement allowance" means the monthly benefit payable after service or disability retirement.

(21) "Retirement date" means the date on which the first payment of the retirement or disability benefits of a member or a beneficiary is payable.

(22) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a firefighter."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1983.

CHAPTER NO. 586

AN ACT TO PROVIDE FOR VOTING BY ABSENTEE BALLOT AT LEAST 14 DAYS PRIOR TO AN ELECTION; AMENDING SECTION 13-13-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-222, MCA, is amended to read:

"13-13-222. Voting before election day by prospective absentee or physically incapacitated elector. (1) *As soon as the official ballots are available, the election administrator shall permit an* elector

who is present in his county and who has reason to believe that he will be absent from the county or physically incapacitated on election day *to* vote before election day before the election administrator.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the election administrator, he shall deal with it in the same manner as if it had come by mail."

Section 2. **When ballots to be available.** The election administrator shall ensure that ballots are printed and available for absentee voting at least 14 days prior to an election.

Section 3. **Codification instruction.** Section 2 is intended to be codified as an integral part of Title 13, chapter 13, part 2, and the provisions of Title 13 apply to section 2.

Approved April 19, 1983.

CHAPTER NO. 587

AN ACT TO INCREASE THE MINIMUM FEE FOR ISSUANCE OF A CERTIFIED COPY OF A BIRTH OR DEATH CERTIFICATE BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES OR A SEARCH OF VITAL STATISTICS RECORDS BY THE DEPARTMENT; PROVIDING THAT ALL FEES BE DEPOSITED IN AN EARMARKED REVENUE FUND; AMENDING SECTION 50-15-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-15-111, MCA, is amended to read:

"**50-15-111. Certified copy fee.** (1) The department shall prescribe a fee of not less than *$5* for a certified copy of certificates or search of files.

(2) Fees received for a certified copy of a certificate or a search of files shall be deposited in an earmarked revenue fund to be used by the department for the maintenance of indexes to and costs for the preservation of vital records."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 19, 1983.

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CHAPTER NO. 588

AN ACT REESTABLISHING THE PUBLIC SERVICE COMMISSION UNDER EXISTING STATUTORY AUTHORITY AND RULES; REVISING PUBLIC SERVICE COMMISSION AUTHORITY; PROVIDING FOR FEES COMMENSURATE WITH COSTS; MAKING TEMPORARY MUNICIPAL REGULATORY AUTHORITY OVER UTILITIES PERMANENT; EXEMPTING PRIVATELY OWNED AND COUNTY WATER AND SEWER SYSTEMS FROM PUBLIC SERVICE COMMISSION REGULATION; AUTHORIZING TEMPORARY UTILITY RATE DECREASES; CLARIFYING TIME LIMITS ON MUNICIPAL RATE INCREASES; MODIFYING MUNICIPAL RATE HEARING NOTICE REQUIREMENTS; EXTENDING SPECIAL PROVISIONS RELATING TO WASTE DISPOSAL TO GOVERNMENTS; AMENDING SECTION 9, CHAPTER 607, LAWS OF 1981; AMENDING SECTIONS 2-8-103, 69-3-101, 69-3-204, 69-3-304, 69-7-101, 69-7-102, 69-7-111, 69-12-311 THROUGH 69-12-313, 69-12-321, 69-12-324, 69-12-406, 69-12-421, AND 69-12-423, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Public Service Commission and requires a performance evaluation of the Commission by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Public Service Commission be reestablished.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The public service commission, department of public service regulation, created by 69-1-102, is reestablished for 6 years pursuant to 2-8-122, with existing statutory authority and rules.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

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(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of commerce, created by 2-15-1881;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of commerce, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(i) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

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(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

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(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates July 1, 1989: public service commission, department of public service regulation, created by 69-1-102."

Section 3. **Fees.** Each fee charged by the commission must be commensurate with the costs incurred in administering the function for which the fee is charged except those fees set by federal statute. No fee set by the commission may exceed $500.

Section 4. Section 9, Chapter 607, Laws of 1981, is amended to read:

"Section 9. **Effective date.** This act shall become effective on July 1, 1981."

Section 5. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". *(1)* The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) telegraph or telephone service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public; or

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23."

Section 6. Section 69-3-204, MCA, is amended to read:

"69-3-204. Fees to be charged by commission. (1) The public service commission *may*, except as otherwise provided by law, require and receive fees before filing annual reports, schedules, and supplements *not* provided by law to be furnished free of charge.

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(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing notice as required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, schedules, and supplements of these which relate solely to interstate commerce."

Section 7. Section 69-3-304, MCA, is amended to read:

"69-3-304. Temporary approval of rate increases or decreases. The commission may, in its discretion, temporarily approve increases *or decreases* pending a hearing or final decision. If the final decision is to disapprove *an* increase, the commission *may* order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval. *If the final decision is to disapprove a decrease, the commission may order a surcharge to be paid by all consumers for the amount not collected retroactive to the date of the temporary approval. The commission shall order interest to be paid on a rebate or surcharge as determined by the commission.* An order of the commission approving or denying a temporary rate increase *or decrease* shall be *based upon consistent standards appropriate for the nature of the case pending and shall be* an intermediate agency action subject to judicial review under the Montana Administrative Procedure Act."

Section 8. Section 69-7-101, MCA, is amended to read:

"69-7-101. Municipal utilities — regulation by municipality — limitation. A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications shall be reasonable and just and, except as provided in 69-7-102, they may not be raised to yield more than a 12% increase in total annual revenues or, in the case of mandated federal and state capital improvements, the increase may not exceed amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements. *Annual revenues must be computed on any consecutive 12-month period for purposes of this chapter.*"

Section 9. Section 69-7-102, MCA, is amended to read:

"69-7-102. Rate increases over maximum. *(1)* If a municipal utility requires rate increases that yield an increase in total revenues in excess of 12% in any one year or rate increases for mandated federal and state capital improvements for which the increase exceeds amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements, it must make application for such increases to the public service commission.

(2) If the public service commission issues a rate order approving such an increase, the municipality may not increase any rates and charges under this chapter within 12 months of the commission's order unless an increase is necessary to meet the requirements of bond indentures or loan

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agreements required to finance the local government's share for mandated federal and state capital improvements."

Section 10. Section 69-7-111, MCA, is amended to read:

"**69-7-111. Municipal rate hearing required — notice.** (1) If the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."

Section 11. Section 69-12-311, MCA, is amended to read:

"**69-12-311. Class A motor carrier certificate.** (1) No Class A motor carrier shall operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate declaring that public convenience and necessity require such operation.

(2) A motor carrier making application for such certificate shall do so in writing, separately for each route, which petition shall be verified by the applicant and shall specify the following matters:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the public highway or highways over which and the fixed termini between which or the regular route or routes over which it intends to operate;

(c) the kind of transportation, whether passenger, freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to

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be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic;

(d) the proposed time schedule;

(e) a schedule of the tariff or rates desired to be charged for the transportation of freight and/or passengers;

(f) a complete and detailed description of the property proposed to be devoted to the public service;

(g) a detailed statement showing the assets and liabilities of such applicant; and

(h) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a filing fee to be set by *rule of* the commission."

Section 12. Section 69-12-312, MCA, is amended to read:

"69-12-312. Class B motor carrier certificate. (1) No Class B motor carrier shall operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate that public convenience and necessity require such operations.

(2) A motor carrier making application for such permit shall do so in writing, separately for each locality for which consideration is desired, which petition shall be verified and shall specify the following matters:

(a) name and address of the applicant and the names and addresses of its officers, if any;

(b) the kind of transportation, whether passenger, freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic;

(c) the locality and character of operations to be conducted;

(d) a schedule of the tariff of rates desired to be charged for the transportation of freight and/or passengers;

(e) a complete and detailed description of the property proposed to be devoted to the public service;

(f) a detailed statement showing the assets and liabilities of such applicant; and

(g) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a filing fee to be set by *rule of* the commission."

Section 13. Section 69-12-313, MCA, is amended to read:

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"69-12-313. Class C motor carrier certificate. (1) No Class C motor carrier, except any Class C motor carrier operating pursuant to the terms and conditions of a contract *as provided in 69-12-324*, shall operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities or for the transportation of persons on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate that public convenience and necessity require such operation.

(2) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the public highways or highways over which and the fixed termini between which or the route or routes over which it intends to operate, if the same are fixed, or the particular city, town, station, or locality from and/or to which the applicant intends to operate;

(c) the kind of transportation and the character of the goods, wares, merchandise, or commodities to be distributed, delivered, or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of such vehicles, to be used in such service of distribution, delivery, or collection; and

(d) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a fee to be set by *rule of* the commission.

(4) The submission of a Class C motor carrier application must be accompanied by the names and addresses of any person, corporation, or other legal entity with whom the applicant has executed a contract for the distribution, delivery, or collection of wares, merchandise, or commodities or transporting persons. Such contracts must be in writing, executed by the parties and submitted to the commission for examination."

Section 14. Section 69-12-321, MCA, is amended to read:

"69-12-321. Hearing on application for motor carrier certificate. (1) Upon the filing of such application by a Class A, Class B, Class C, or Class D motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract *as provided in 69-12-324*, or upon the filing of a request for a transfer of authority, the commission shall give notice thereof to any interested party. The commission shall fix a time and place for hearing thereon whenever a protest or a request for a hearing is received. The hearing is to be set for a date not later than 60 days after receipt of a protest or a hearing request by the commission. Whenever no protests or hearing requests are received, the commission may act on the application without a hearing as prescribed by commission rules.

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(2) Any motor carrier referred to in 69-12-322, the department of highways, the governing board or boards of any such county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are hereby declared to be interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) The contracting parties referred to in 69-12-313(4) must appear and offer testimony in support of the applicant.

(4) However, an application by a Class A, Class B, Class C, or Class D motor carrier for a certificate may be disallowed without a public hearing thereon when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities therein have materially changed since said public investigation and finding and that public convenience and necessity do now require the motor carrier operation."

Section 15. Section 69-12-324, MCA, is amended to read:

"69-12-324. Special provisions when federal, state, or local government contract involved. (1) *The* presentation of the written contract to the commission shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state *government contracts. Subject to the provisions of this section, a transportation movement is considered to be:*

(a) the transportation for hire of persons or commodities between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof; or

(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof.

(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state *government* contract may be issued by the commission upon receipt of an executed copy of the United States government or state *government* contract. The certificate of public convenience and necessity may be issued thereafter without requiring the commission to fix a time and place for public hearing.

(3) The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state *government* contract, is authorized only for the duration of the United States government or state *government* contract concerned. The certificate may be renewed for another definite term if the same motor carrier is the motor carrier

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authorized to operate under the United States government or state *government* contract."

Section 16. Section 69-12-406, MCA, is amended to read:

"69-12-406. Restriction on transportation of certain waste. *Except as provided in 69-12-324, no* Class A, B, or C carrier will be authorized or permitted to transport ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter within the state."

Section 17. Section 69-12-421, MCA, is amended to read:

"69-12-421. Annual fee for motor carriers. (1) Except as provided in subsection (2), in addition to all of the licenses, fees, or taxes imposed upon motor vehicles in this state and in consideration of the use of the public highways of this state, every motor carrier shall, at the time of the issuance of a certificate and annually thereafter, on or between *October* 1 and *the following* January *31*, pay to the public service commission of Montana *a fee set by rule of the commission* for every motor vehicle operated by the carrier over or upon the public highways of this state.

(2) (a) A motor carrier engaged in seasonal operations only, where its operations do not extend continuously over a period of not to exceed 6 months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half of the compensation and fees herein provided.

(b) The compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The commission shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment."

Section 18. Section 69-12-423, MCA, is amended to read:

"69-12-423. Fees to be charged by commission. (1) The public service commission *may*, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, *applications*, and supplements *not* provided by law to be furnished free of charge.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing such notice as may be required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements of these which relate solely to interstate commerce."

Section 19. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 69, chapter 1, part 1, and the provisions of Title 69, chapter 1, part 1, apply to section 3.

Section 20. **Effective dates.** (1) This act, except for section 5, is effective July 1, 1983.

(2) Section 5 is effective on passage and approval.

Approved April 19, 1983.

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CHAPTER NO. 589

AN ACT TO AUTHORIZE THE ADMINISTRATIVE CODE COMMITTEE TO OBJECT TO ANY RULE UPON THE GROUND THAT IT WAS ADOPTED IN SUBSTANTIAL VIOLATION OF THE PROCEDURAL OR SUBSTANTIVE AUTHORITY DELEGATED TO THE AGENCY; REQUIRING THE AGENCY, AFTER OBJECTION BY THE COMMITTEE, TO PROVE THE LAWFULNESS OF THE RULE; ALLOWING COSTS AND ATTORNEY FEES AGAINST THE AGENCY IF THE RULE IS INVALIDATED BY COURT JUDGMENT; AMENDING SECTION 2-4-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Committee objection to violation of authority for rule — effect.** (1) If the administrative code committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency which promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

(3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt thereof, publish the objection in the Montana Administrative Register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response shall be borne by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by court judgment because the agency failed to meet its burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable attorney fees against the agency.

Section 2. Section 2-4-506, MCA, is amended to read:

"2-4-506. Declaratory judgments on validity or application of rules. (1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

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(2) A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of *the* authorizing statute as evidenced by documented legislative intent.

(3) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(4) The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business or in which the agency maintains its principal office. The agency shall be made a party to the action."

Section 3. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 2, chapter 4, part 4, and the provisions of Title 2, chapter 4, apply to section 1.

Approved April 19, 1983.

CHAPTER NO. 590

AN ACT PROVIDING THAT THE COURT, IN A CHILD SUPPORT PROCEEDING, MAY TAKE INTO CONSIDERATION THE LEVEL OF SUPPORT RECEIVED BY CHILDREN ON PUBLIC ASSISTANCE; AMENDING SECTION 40-4-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) the financial resources of the child;

(2) the financial resources of the custodial parent;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4) the physical and emotional condition of the child and his educational needs;

(5) the financial resources and needs of the noncustodial parent; *and*

(6) for the purposes of determining a minimum amount for support, the amount received by children under the AFDC program, as defined in 53-2-702."

Approved April 19, 1983.

CHAPTER NO. 591

AN ACT TO INCREASE THE FEES FOR LICENSING OF WEIGHING DEVICES AND TO PROVIDE A LATE RENEWAL FEE; AMENDING SECTION 30-12-203, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-12-203, MCA, is amended to read:

"30-12-203. Licensing of weighing devices. (1) No person shall knowingly operate or use any unlicensed weighing devices in trade or commerce for ascertaining the weight of any commodity.

(2) Such license shall be obtained by making application to the department upon blank forms to be provided by the division of weights and measures. Each license should include at least one inspection per year.

(3) Every application shall be accompanied by the proper fee as established by this section.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	*$ 5.00*
500 pounds through 1,999 pounds	*8.00*
2,000 pounds through 7,999 pounds	*15.00*
8,000 pounds through *60,000* pounds	*40.00*
60,001 pounds or more	*70.00*

(4) The capacity of a weighing device shall be determined by the manufacturer's rated capacity.

(5) All licenses shall be annual and shall expire on December 31.

(6) *A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid before July 1 of the year in which the license fee is due. In addition, any* person failing to pay the renewal license fee *before July 1* shall forfeit the right to use the weighing device, and it shall be taken out of service by the division of weights and measures *until the renewal fee and late renewal fee are paid."*

Section 2. **Effective date.** This act is effective January 1, 1984.

Approved April 19, 1983.

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CHAPTER NO. 592

AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH A FEE FOR AN AMBULANCE LICENSE OF $35; AMENDING SECTION 50-6-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-6-307, MCA, is amended to read:

"50-6-307. License fee. (1) There shall be paid to the department, with each application for a license or for renewal of a license, an annual license fee of *$35.*

(2) The department shall deposit fees with the state treasurer to the credit of the state general fund.

(3) Payment of the license fee stipulated in this part shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this part."

Approved April 19, 1983.

CHAPTER NO. 593

AN ACT TO PROVIDE FOR BASIC LEVELS OF BENEFITS UNDER DISABILITY INSURANCE POLICIES AND CONTRACTS FOR THE CARE AND TREATMENT OF MENTAL ILLNESS, ALCOHOLISM, AND DRUG ADDICTION; AMENDING SECTIONS 33-22-701 THROUGH 33-22-704, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-701, MCA, is amended to read:

"33-22-701. Scope of part — purpose. The *provisions* of this part *apply to all group policies of accident and health insurance and group subscriber contracts offered in Montana by insurers and health service corporations* for the care and treatment of mental illness, alcoholism, and drug addiction. *It is the purpose of this part* to preserve the rights of the consumer to *have* such coverage according to his medical and economic needs."

Section 2. Section 33-22-702, MCA, is amended to read:

"33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Inpatient hospital benefits" means benefits payable for charges made by a hospital *or freestanding inpatient facility,* as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined

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as *an* inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician, as defined in the policy or contract, for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as a hospital inpatient.

(2) "Outpatient benefits" means benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as a hospital inpatient;

(c) reasonable charges made by a mental health, alcoholism, or drug addiction treatment center for the necessary care and treatment of a covered person provided in the treatment center; *and*

(d) reasonable charges for services rendered by a licensed psychiatrist or psychologist.

(3) "Alcoholism treatment center" and "drug addiction treatment center" mean a treatment facility which provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician *or chemical dependency counselor certified by the state*, and which facility is also:

(a) affiliated with a hospital under a contractual agreement with an established system for patient referral; or

(b) licensed or approved as an alcoholism or drug addiction treatment center by the *alcohol authority of the* state.

(4) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and which facility is also:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(5) "Mental illness" means neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder."

Section 3. Section 33-22-703, MCA, is amended to read:

"33-22-703. Coverage for mental illness, alcoholism, and drug addiction. Insurers and health service corporations transacting *group* health insurance *or group health plans* in this state *shall provide,*

under hospital and medical expenses incurred insurance *group* policies and under hospital and medical service plan *group* contracts, the level of benefits specified in this section for the necessary care and treatment of mental illness, alcoholism, and drug addiction subject to the right of the applicant to select any alternative level of benefits *above the minimum level of benefits described in subsections (1)(b), (2)(a), (2)(b), and (2)(d)* as may be offered by the insurer or service plan corporation:

(1) *under* basic *inpatient* expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) benefits may be limited to not less than 30 calendar days per year as defined in the policy or contract;

(b) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) $4,000 in any 24-month period; and

(ii) $8,000 in lifetime benefits;

(2) *under* major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient benefits may be limited to *no less than* 30 calendar days per year as defined in the policy or contract. If inpatient benefits are provided beyond 30 calendar days per year, the durational limits, dollar limits, deductibles, and coinsurance factors applicable thereto need not be the same as applicable to physical illness generally.

(b) for outpatient benefits, the coinsurance factor may not exceed 50% or the coinsurance factor applicable for physical illness generally, whichever is greater, and the maximum benefit for mental illness, alcoholism, and drug addiction in the aggregate during any applicable benefit period may be limited to not less than $1,000;

(c) maximum lifetime benefits *shall*, for mental illness in the aggregate, be no less than *those applicable to physical illness generally;*

(d) the aggregate maximum benefit for alcoholism and drug addiction of inpatient expenses under basic inpatient policies and contracts plus inpatient expenses under major medical policies and contracts may be limited to no less than:

(i) $4,000 in any 24-month period; and

(ii) $8,000 in lifetime benefits."

Section 4. Section 33-22-704, MCA, is amended to read:

"**33-22-704. Applicability.** (1) Except as provided in *subsections* (2) *and (3)*, this part applies to policies or contracts delivered or issued for

delivery in this state more than 120 days after July 1, 1979, but does not apply to blanket, short term travel, accident only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans.

(2) With respect to mental illness, this part applies to policies or contracts delivered or issued for delivery in this state after January 29, 1982.

(3) [This act] applies to policies or contracts delivered or issued for delivery in this state after December 31, 1983, but does not apply to blanket, short-term travel, accident only, limited or specified disease, or policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans."

Approved April 19, 1983.

CHAPTER NO. 594

AN ACT TO GENERALLY REVISE THE REIMBURSEMENT LAWS OF THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 53-1-401, 53-1-404, 53-1-405, 53-1-409, AND 53-1-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-401, MCA, is amended to read:

"53-1-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary charge" means identifiable, direct, resident service expenses as budgeted, including but not limited to operating room, anesthesia, x-ray, laboratory, blood bank, oxygen therapy, physical therapy, medical supply, drug, and specialized medical equipment expenses.

(2) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(5) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

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(6) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. No absence of a resident from the institution due to a temporary or trial visit may be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(7) "Per diem" means the gross daily cost of operating an institution as budgeted, *including depreciation and associated department costs but* excluding the cost of educational programs, *federal grants,* ancillary charges, *and costs not directly identified with patient care.*

(8) "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

(9) "Third-party resource" means but is not limited to applicable medicare, medicaid, and personal health care benefits."

Section 2. Section 53-1-404, MCA, is amended to read:

"**53-1-404. When per diem to be computed.** The per diem shall be computed on July 1 of each year by the department. *If the budgeted costs of an institution change substantially within the fiscal year, the per diem may be adjusted to compensate for those changes.*"

Section 3. Section 53-1-405, MCA, is amended to read:

"**53-1-405. Monthly assessment of charges.** (1) The department shall assess monthly against each resident, financially responsible person, *or applicable third-party resource* the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge based upon financial information given to the department during its investigation conducted according to the rules of the department.

(2) An assessment made by the department under this section shall be based on the resident's or financially responsible person's ability to pay. The department shall prescribe rules which establish criteria and a procedure for determining ability to pay. The department may not make an assessment which would place an undue financial burden on the resident or the financially responsible person."

Section 4. Section 53-1-409, MCA, is amended to read:

"**53-1-409. Liability of resident or responsible person for assessed charges.** (1) The resident or financially responsible person is liable only for the per diem and ancillary charges which the department has assessed and billed the resident or financially responsible person. If amounts assessed and billed are retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person is liable only for the reduced amount for the period of time covered by the retroactive reduction.

(2) The natural or adoptive parents of long-term residents are liable only for the charges made by the department for care in an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the department.

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(3) Natural or adoptive parents of a long-term resident are not liable for any charges made by the department for care of a long-term resident incurred or accrued subsequent to the resident attaining age 18.

(4) *(a)* No resident or financially responsible person is financially liable for care provided to a resident under any provision of a criminal statute.

(b) Subsection (4)(a) does not apply to a person who is enrolled in the Galen state hospital alcohol program."

Section 5. Section 53-1-413, MCA, is amended to read:

"**53-1-413. Deposit of payments.** *(1) Except as provided in subsection (2), the* department shall deposit payments of per diem and ancillary charges in the state treasury to the credit of the general fund.

(2) Payments from the Montana veterans' home shall be deposited in a federal and private revenue fund account for the benefit of the home, and payments from the Galen state hospital alcohol program shall be deposited to an alcohol earmarked revenue fund account."

Approved April 19, 1983.

CHAPTER NO. 595

AN ACT REVISING THE DETERMINATION OF DISTANCE LIMITATIONS FOR THE ISSUANCE OF A LIQUOR LICENSE; EXCEPTING LICENSES ALREADY ISSUED; AMENDING SECTIONS 16-1-106, 16-4-105, 16-4-201, AND 16-4-501, MCA; AND REPEALING SECTIONS 16-4-409 AND 16-4-410, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

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(6) "Department" means the department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(9) "Liquor" means an alcoholic beverage except beer and table wine.

(10) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(11) "Package" means a container or receptacle used for holding an alcoholic beverage.

(12) "Posted price" means the retail price of liquor as fixed and determined by the department and in addition thereto an excise and license tax as provided in this code.

(13) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(14) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(15) "Rules" means rules published by the department pursuant to this code.

(16) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(17) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor.

(18) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(19) "Table wine" means wine as defined below which contains not more than 14% alcohol by volume.

(20) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage, and distribution of beer as permitted by this code.

(21) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural

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products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains not less than 7% or more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption. (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license, which may not be used in conjunction with a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one beer license for each 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, two additional retail beer licenses for the first 2,000 inhabitants or major fraction thereof and one additional retail beer license for each additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured *in a straight*

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line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations;

(d) such limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a beer-and-wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(3) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption only may be issued to any person, firm, or corporation who is approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue is not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause."

Section 3. Section 16-4-201, MCA, is amended to read:

"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and wine at retail (an all-beverages license) in accordance with the provisions of this code and the rules of the department may be issued to any person who is approved by the department as a fit and proper person to sell such beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities

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and towns shall be determined on the basis of population prescribed in 16-4-502 as follows:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and may not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured *in a straight line* from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(3) Retail all-beverages licenses of issue on March 7, 1947, and which are in excess of the foregoing limitations shall be renewable, but no new licenses may be issued in violation of such limitations.

(4) Such limitations do not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof may not be more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county."

Section 4. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine,

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under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400;

(c) each beer retailer, $200; with a wine license amendment, an additional $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) The annual fee for resort retail liquor licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured *in a straight line* from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured *in a straight line* from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured *in a straight line*

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from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured *in a straight line* from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages."

Section 5. **Repealer.** Sections 16-4-409 and 16-4-410, MCA, are repealed.

Approved April 19, 1983.

CHAPTER NO. 596

AN ACT TO REQUIRE THAT THE EXECUTIVE BUDGET REFLECT SALARY UPGRADES IN THE CURRENT FUNDING LEVEL; AMENDING SECTIONS 17-7-102 AND 17-7-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-102, MCA, is amended to read:

"17-7-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Current funding level" means that level of funding required to maintain operations and services at the level authorized by the previous legislature, after adjustment for inflation.

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(2) "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.

(3) "Modified funding level" means the current funding level as adjusted to reflect workload increases, the provision of new services, or changes in authorized funding.

(4) "Program" means a combination of resources and activities designed to achieve an objective or objectives.

(5) "Program size" means the magnitude of a program such as the size of clientele served, the volume of service in relation to the population or area, etc.

(6) "Program size indicator" means a measure to indicate the magnitude of a program.

(7) "Priority listing" means a ranking of proposed expenditures in order of importance."

Section 2. Section 17-7-123, MCA, is amended to read:

"17-7-123. Form of executive budget. The budget submitted shall set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, which plan shall consist of:

(1) a consolidated budget summary setting forth the aggregate figures of the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary shall be supported by explanatory schedules or statements, classifying receipts and disbursements contained therein by fund and, where applicable, organizational unit;

(2) an analysis of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(3) a detailed analysis of receipts by accounting entity within fund indicating classification and source of funds;

(4) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented shall include the following:

(a) a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) the current funding level and the modified funding level, if any, for each department and each program of the department. The funding levels must show the number of employees who were given a pay grade change under the pay schedule adopted pursuant to 2-18-303 and the net cost to the agency for such grade changes for the biennium. The changes must be listed in tabular form by:

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(i) position description;

(ii) grade assigned prior to the completed fiscal year;

(iii) grade assigned during the completed fiscal year;

(iv) grade assigned during the current fiscal year;

(v) recommended grade for the ensuing biennium;

(vi) dollar difference for the upgrade or downgrade for each position; and

(vii) net cost to the agency for grade changes;

(c) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;

(d) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category; and

(e) a statement containing further recommendations of the governor should he deem it necessary;

(5) detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project. An appropriation measure shall be presented by project, source of funding, and department, agency, institution, or branch for which the project is primarily intended.

(6) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state."

Approved April 19, 1983.

CHAPTER NO. 597

AN ACT CLARIFYING AND FURTHER DEFINING THE SERVICES TO BE PROVIDED BY PERSONAL-CARE FACILITIES; ESTABLISHING RESTRICTIONS ON ELIGIBILITY FOR RESIDENCY IN SUCH FACILITIES; REQUIRING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES ESTABLISH BY RULE CERTAIN STANDARDS RELATING TO RESIDENT ADMISSION AND SCREENING; PROVIDING FOR LICENSING OF SUCH FACILITIES; PROVIDING FOR CIVIL AND CRIMINAL ENFORCEMENT; CLARIFYING THE DEFINITION OF "ROOMINGHOUSE" OR "RETIREMENT HOME"; AMENDING SECTIONS 50-5-101, 50-51-102, AND 50-51-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Personal-care facilities — services to residents.** A personal-care facility must provide the following services to facility residents:

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(1) residential services such as laundry, housekeeping, food service, and either providing or making available provision for local transportation;

(2) personal assistance services, such as assistance by staff as required by residents in eating, walking, dressing, grooming, and similar routine living tasks;

(3) recreational activities; and

(4) supervision of self-medication.

Section 2. **Placement in personal-care facilities.** (1) A personal-care facility may not have as a resident a person who is:

(a) in need of medical or physical restraints;

(b) nonambulatory or bedridden;

(c) totally incontinent; or

(d) less than 18 years of age.

(2) The department shall, in consultation with the department of social and rehabilitation services, provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, his physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by persons prohibited by subsection (1);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection (1)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident.

Section 3. **Licensing personal-care facilities.** (1) The department shall, in consultation with the department of social and rehabilitation services, by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of [sections 1 and 2].

(2) The department may by rule establish license fees, inspection fees, and fees for patient screening. Such fees must be reasonably related to service costs.

Section 4. **Limited licensing.** The department may grant a license that is provisional upon the correction of noncompliance with provisions of [sections 1 through 6] or rules adopted pursuant to [sections 1 through 6]. A provisional license may be granted only for a specific period of time and may not be renewed.

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Section 5. **Life-threatening situations — immediate license suspension.** If the department has reason to believe that a life-threatening situation exists relating to residents of a personal-care facility, whether caused by an act or omission of the facility operator, act of nature, or any other cause, it may immediately suspend the facility's license and require evacuation of the facility. Within 5 days of such suspension, the department shall show cause in the district court of the county in which the facility is located why such suspension should be extended or the license permanently or temporarily revoked. After a hearing, the district court may remove the suspension or, upon finding sufficient cause, may:

(1) extend the license suspension until the life-threatening emergency has abated;

(2) order a conditional revocation or suspension of the license subject to correction of any life-threatening deficiency by the facility operator; or

(3) revoke the facility license.

Section 6. **Enforcement — denial, suspension, or revocation of license — criminal and civil penalties — injunctions.** (1) The department may deny, suspend, or revoke a personal-care facility license for failure to meet the minimum standards as set forth in [sections 1 through 6] or applicable health standards established by the department.

(2) The department or the county attorney of the county in which the facility is located may, after notice to the facility operator of noncompliance with [section 2(1)] and failure of the operator to correct such noncompliance within a period of time, which may not be less than 10 days, set forth in the notice, petition the district court of the county in which the facility is located for the imposition of a civil penalty not to exceed $500 per violation. Money collected as a civil penalty must be deposited in the state general fund.

(3) The department or the county attorney of the county in which the facility is located may bring an action in the district court of that county to enjoin any violation of a provision of [sections 1 through 6].

(4) In addition to all other enforcement measures, a violation of the provisions of [sections 1 through 6] is a misdemeanor, punishable upon conviction as provided in 46-18-212.

Section 7. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for

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health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(8) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(9) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

(10) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(11) "Federal acts" means federal statutes for the construction of health care facilities.

(12) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(13) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(14) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(15) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services

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must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(16) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(17) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(18) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accredidation status to any health care facility that it finds meets its standards and requirements.

(19) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(20) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than *four* persons who are not related to the owner or administrator by blood or marriage, with these degrees of care defined as follows:

(i) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(ii) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(iii) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(b) Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities.

(21) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

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(22) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(23) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(24) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(25) "Offer" means the holding out by a health care facility that it can provide specific health services.

(26) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(27) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(28) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(29) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(30) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

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(31) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(32) "State plan" means the state medical facility plan provided for in part 4."

Section 8. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means board of health and environmental sciences.

(2) "Department" means the department of health and environmental sciences.

(3) "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(4) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, tourist home, retirement home, or roominghouse.

(5) "Roominghouse", *"boardinghouse"*, or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing *or personal-care services provided by the facility.*

(6) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(7) "Transient guest" means a guest for only a brief stay, such as the traveling public."

Section 9. Section 50-51-107, MCA, is amended to read:

"50-51-107. Provision of nursing services or personal-care services by the facility prohibited. (1) Hotels, motels, boardinghouses, roominghouses, or similar accommodations may not provide professional nursing services *or personal-care services. A resident of a hotel, motel, boardinghouse, roominghouse, or similar accommodation may have personal-care, medical, or nursing-related services provided for him in such facility by a third-party provider.*

(2) Whenever a complaint is filed with the department that a person in need of professional nursing services is residing in a roominghouse or other similar accommodation not licensed to provide such service, the

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department shall investigate and *may require* appropriate *care or* placement of such person if it is found that professional nursing services are needed."

Section 10. **Coordination instruction.** If House Bill 424 is not passed and approved, the bracketed reference to HB 424 in section 1 is stricken.

Section 11. **Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 50, chapter 5, parts 1 through 4, and the provisions of Title 50, chapter 5, parts 1 through 4, apply to sections 1 through 6.

Approved April 19, 1983.

CHAPTER NO. 598

AN ACT REVISING THE DISCRETIONARY AUTHORITY OF THE HIGHWAY COMMISSION REGARDING PROJECTS FOR COMPETITIVE BIDDING; CLARIFYING THE EXCEPTION TO COMPETITIVE BIDDING; AMENDING SECTION 60-2-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-112, MCA, is amended to read:

"60-2-112. Competitive bidding. (1) When the estimated cost of any work exceeds *$10,000*, the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.

(2) The commission may let a contract by means other than competitive bidding if it determines that special circumstances so require. The commission must specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total cost of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) If, on any highway construction work financed in whole or in part by federal funds, the commission finds that enforcement of the provisions contained in 15-50-203 and 18-2-311 relating to public contractors working beyond contract time will result in a reduction in the full benefits of Title 23, U.S.C., it may waive enforcement of such provisions."

Approved April 19, 1983.

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CHAPTER NO. 599

AN ACT ESTABLISHING GOODS AND EQUIPMENT INTENDED FOR RENT OR LEASE AS CLASS EIGHT PROPERTY FOR PURPOSES OF TAXATION; PROVIDING AN EXCEPTION; AMENDING SECTIONS 15-6-136, 15-6-138, AND 15-6-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies except:

(i) those included in class five; and

(ii) coal and ore haulers;

(c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

(d) motorcycles;

(e) watercraft;

(f) light utility and boat trailers;

(g) aircraft;

(h) all-terrain vehicles;

(i) harness, saddlery, and other tack equipment;

(j) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class; and

(k) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value."

Section 2. Section 15-6-136, MCA, is amended to read:

"15-6-136. Class six property — description — taxable percentage. (1) Class six property includes:

(a) livestock and poultry and the unprocessed products of both;

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(b) all unprocessed agricultural products on the farm or in storage except all perishable fruits and vegetables in farm storage and owned by the producer;

(c) items of personal property intended for lease in the ordinary course of business provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis.

(2) Class six property is taxed at 4% of its market value."

Section 3. Section 15-6-202, MCA, is amended to read:

"15-6-202. Freeport merchandise and business inventories exemption. (1) Freeport merchandise and business inventories are exempt from taxation.

(2) Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment to a final destination outside the state and which have acquired a taxable situs within the state.

(3) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

(4) Any person or other group seeking to qualify its property for inclusion in the freeport merchandise class shall make application to the department of revenue in such manner or form as may be required by the department.

(5) "Business inventories" *include* goods *primarily* intended for sale *and not for* lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories do not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade."

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 19, 1983.

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CHAPTER NO. 600

AN ACT PROVIDING A GRADUATED SCALE FOR THE DISCOUNT ALLOWED FOR AFFIXING TAX INSIGNIA TO CIGARETTE PACKAGES; CORRECTING A PRIOR LEGISLATIVE OVERSIGHT; AMENDING SECTIONS 16-11-114 AND 16-11-115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-114, MCA, is amended to read:

"**16-11-114. Insignia discount.** Every licensed wholesaler and licensed retailer shall be entitled to purchase said insignia at full face value less *the following percentage* of the face value upon payment therefor as defrayment of the costs of affixing insignia and precollecting such tax on behalf of the state of Montana:

(1) 6% for the first 2,580 cartons or portion thereof purchased in any calendar month;

(2) 4% for the next 2,580 cartons or portion thereof purchased in any calendar month; and

(3) 3% for purchases in excess of 5,160 cartons in any calendar month."

Section 2. Section 16-11-115, MCA, is amended to read:

"**16-11-115. Tax meter machine.** The department may authorize any wholesaler or retailer of cigarettes licensed under this part to use a tax meter machine with which to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state. The insignia shall be one approved by the department. Each package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax-stamping meter, and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler or retailer licensed under this part. The department shall supervise and check the operation of such tax meter machines. The operator of such machine, before using the same, shall take the meter thereof to the county treasurer of the county in which the machine is operated, who is authorized to and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall charge said operator the amount of money proper for said setting less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The county treasurer shall report to the department on forms prescribed by it the name of the licensed wholesaler or licensed retailer and the number of packages for which said meter was set and shall forward to the department any amounts collected from said licensee."

Approved April 19, 1983.

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CHAPTER NO. 601

AN ACT TO INCREASE THE PENALTIES FOR OVERWEIGHT VEHICLES; TO REVISE THE DISPOSITION OF FINES AND FORFEITURES COLLECTED FOR VIOLATIONS OF THE VEHICLE SIZE, WEIGHT, AND LOAD LAWS; AND TO PROVIDE FOR JURISDICTION OF SUCH LAWS IN JUSTICES' COURTS; AMENDING SECTIONS 3-10-303, 61-10-145, AND 61-10-148, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-145, MCA, is amended to read:

"61-10-145. Penalties. (1) A person, firm, or corporation convicted of violating 61-10-101 through 61-10-110 shall be punished by a fine of not less than *$30* or more than *$100.* A person, firm, or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) *$30* for any excess weight up to and including 2,000 pounds;

(b) *$50* for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) *$70* for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) *$100* for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) *$160* for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) *$220* for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) *$300* for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) *$400* for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) *$500* for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) *$600* for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) *$1,000* for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) *$2,000* for any excess weight more than 25,000 pounds.

(2) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through

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61-10-110 shall specify the amount of the overweight which the defendant is alleged to have had upon the vehicle or combination of vehicles.

(3) The penalties in subsection (1) do not apply to an operator who fails to secure a special permit as provided for in 61-10-107(3) if the vehicle or combination of vehicles is not overweight with such a permit. The failure to obtain the special permit is punishable under 61-10-146, and the operator is required to purchase the permit. If the vehicle or combination of vehicles exceeds the weight limitations allowed by special permit and the operator fails to obtain a permit under 61-10-107(3), the penalties of subsection (1) apply to the weight exceeding 80,000 pounds.

(4) It is a misdemeanor, punishable as provided in 46-18-212, for any person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142."

Section 2. Section 61-10-148, MCA, is amended to read:

"61-10-148. Disposition of fines and forfeited bonds. Except as provided in 61-12-701, *one-half of all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the state treasurer for deposit in the state highway account in the earmarked revenue fund. The remaining half, less the deductions required by law, must be deposited in the county road fund.*"

Section 3. Section 3-10-303, MCA, is amended to read:

"3-10-303. Criminal jurisdiction. The justices' courts have jurisdiction of public offenses committed within the respective counties in which such courts are established as follows:

(1) jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months or both such fine and imprisonment, excluding jurisdiction in cases commenced under Title 45, chapter 9, except to act as examining and committing courts and to conduct preliminary hearings as provided in subsection (4);

(2) jurisdiction of all violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

(3) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine only not exceeding $1,500;

(4) jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings; *and*

(5) jurisdiction of all violations of Title 61, chapter 10."

Approved April 20, 1983.

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CHAPTER NO. 602

AN ACT ALLOWING AN ARRESTING OFFICER TO IMMEDIATELY SEIZE THE DRIVER'S LICENSE OF ANY PERSON DRIVING UPON WAYS OF THIS STATE OPEN TO THE PUBLIC WHO REFUSES TO SUBMIT TO A CHEMICAL TEST; PROVIDING FOR SUSPENSION OR REVOCATION OF THE LICENSE BY THE MOTOR VEHICLE DIVISION; INCREASING THE PERIOD OF SUSPENSION; PROVIDING THAT AN APPEAL OF SUSPENSION MAY BE FILED IN THE DISTRICT COURT IN THE COUNTY IN WHICH THE ARREST WAS MADE AS WELL AS IN THE DISTRICT COURT IN THE COUNTY OF THE DRIVER'S RESIDENCE; AND REDUCING THE TIME FOR NOTICE OF AN APPEAL OF SUSPENSION TO THE COUNTY ATTORNEY; AMENDING SECTIONS 61-8-402 AND 61-8-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon *ways* of this state *open to the public* shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon *ways* of this state *open to the public* while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a *resident driver* under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the *officer shall, on behalf of the* division, *immediately seize his driver's license. The peace officer shall forward the license to the division, along with* a sworn report that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon *ways* of this state *open to the public* while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer. *Upon receipt of the report, the division shall suspend the license for the period provided in subsection (5).*

(4) Upon seizure of a resident driver's license, the peace officer shall issue, on behalf of the division, a temporary driving permit, which is valid for 72 hours after the time of issuance.

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(5) The following suspension and revocation periods are applicable upon refusal to submit to a chemical test:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the division, a revocation of 1 year with no provision for a restricted probationary license.

(6) Like refusal by a nonresident shall be subject to suspension by the division in like manner, *and the same temporary driving permit shall be issued to nonresidents.*

(7) All such suspensions are subject to review as hereinafter provided."

Section 2. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended *or revoked*, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person *resides or in the district court in the county in which this arrest was made.* Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon *10* days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon *ways of this state open to the public* while under the influence of alcohol, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Approved April 20, 1983.

CHAPTER NO. 603

AN ACT TO DEFINE THE TERM "GENERAL ELECTION" FOR THE PURPOSE OF SUBMISSION TO THE PEOPLE OF LAWS OR CONSTITUTIONAL AMENDMENTS BY THE LEGISLATURE; AMENDING SECTIONS 13-1-101 AND 13-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(2) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;

(b) for the purposes of chapters 35, 36, or 37, an individual who has publicly announced his intention to seek nomination or election to public office by write-in vote and who has received a contribution or made an expenditure or has given an authorization to another person to receive a contribution or make an expenditure for the purpose of supporting his nomination or election.

(3) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(4) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time and/or purpose.

(5) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(6) "Elector" means an individual qualified and registered to vote under state law.

(7) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

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(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (3);

(ii) payments by a candidate for his filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for himself and his family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee.

(8) "General election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. *For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1).*

(9) "Individual" means a human being.

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (2) of this section.

(12) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

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(13) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(14) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for such nominations is set on the same date for all similar subdivisions in the state.

(15) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(16) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(17) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(18) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

Section 2. Section 13-1-104, MCA, is amended to read:

"13-1-104. Times for holding general elections. (1) A general election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November *to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6, and* to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of such offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(2) A general election shall be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision required to hold elections annually shall be held on school election day, the first Tuesday of April of each year, and is subject to the election procedures provided for in 13-1-401."

Approved April 20, 1983.

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CHAPTER NO. 604

AN ACT AMENDING THE APPOINTMENT QUALIFICATIONS OF MEMBERS OF THE BOARD OF PERSONNEL APPEALS TO REMOVE POTENTIALLY UNCONSTITUTIONAL APPOINTMENT QUALIFICATIONS; PROVIDING FOR A TRANSITION AND APPOINTMENTS SUBJECT TO THE NEW APPOINTMENT QUALIFICATIONS; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1705, MCA, is amended to read:

"2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial. (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) *(a)* The board consists of five members appointed by the governor *as follows:*

(i) two members, each having management experience involving collective bargaining;

(ii) two members, each having experience as a member or employee of an employee organization; and

(iii) one other member having general labor-management experience, who shall be the chairperson.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests represented by their experience.

(4) When the *chairperson* is unable to participate in a proceeding before the board, *the remaining* members of the board shall select an individual, who shall be a person *who qualifies under subsection (3)(a)(iii)*, to serve in the place of the *chairperson* in that proceeding and he shall participate in the decision in that proceeding. There shall be only one additional *chairperson replacement* appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(6) The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. **Transition — appointment of new members.** Notwithstanding the provisions of section 1 and 2-15-124:

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(1) within 30 days after the effective date of this act, the governor shall appoint members of the board of personnel appeals in compliance with the provisions of section 1;

(2) a majority of the board members appointed by the governor shall be appointed for a term ending January 1, 1985, and remaining members shall be appointed for a term ending January 1, 1987; and

(3) the terms of members of the board of personnel appeals serving on the effective date of this act are terminated on the appointment of their successors.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1983.

CHAPTER NO. 605

AN ACT TO CLARIFY THAT RAILROAD RETIREMENT ACT BENEFIT PAYMENTS RECEIVED DURING CLAIM PERIODS BEGINNING IN 1981 OR 1982 AS A RESULT OF FULFILLMENT OF FEDERAL SOCIAL SECURITY REQUIREMENTS ARE NOT TO BE INCLUDED AS INCOME FOR THE PURPOSE OF COMPUTING ELIGIBILITY FOR THE RESIDENTIAL PROPERTY TAX CREDIT FOR ELDERLY; AMENDING SECTION 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-171, MCA, is amended to read:

"15-30-171. Residential property tax credit for elderly — definitions. As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income except all payments received *as a result of fulfillment of* federal social security *eligibility requirements or payments comparable thereto*, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits, *except payments received as a result of fulfillment of federal social security eligibility requirements*);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief; and

(g) payments and interest on federal, state, county, and municipal bonds.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(4) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(5) "Household income" means all income received by all individuals of a household while they are members of the household.

(6) "Homestead" means a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana, owned and occupied as a residence by the owner for at least 6 months of the claim period or occupied as a dwelling of a renter or lessee for at least 6 months of the claim period, and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling.

(7) "Department" means the department of revenue.

(8) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's length transaction with the landlord.

(9) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period.

(10) "Rent-equivalent tax paid" means 15% of the gross rent."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and is applicable only to claim periods beginning after December 31, 1980, and before January 1, 1983. It is to be applied retroactively within the meaning of 1-2-109 for such periods.

Approved April 21, 1983.

CHAPTER NO. 606

AN ACT TO CHANGE THE DATE FOR FILING A REPORT FOR GAS OR OIL PIPELINES AND GAS OR OIL NET PROCEEDS FOR TAX PURPOSES FROM MARCH 31 TO APRIL 15; AMENDING SECTIONS 15-23-103, 15-23-104, AND 15-23-602; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-103, MCA, is amended to read:

"15-23-103. Due date of reports and returns — extensions. *(1) Except as provided in subsection (2) and 15-23-602, each* report or

return described in 15-23-301, 15-23-402, 15-23-502, or 15-23-701 shall be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-201 shall be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days."

Section 2. Section 15-23-104, MCA, is amended to read:

"15-23-104. Failure to file — estimate by department — penalty. If any person fails to file a report or return *within the time established in* 15-23-103 or by such later date as the department may approve, the department shall estimate the value of the property to have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating value under this section, the department may subpoena a person or his agent as specified in 15-1-302. An assessment based on estimated value is subject to review under 15-8-601. Each month or part of a month a report is delinquent, the department shall impose and collect a $25 penalty, the total not to exceed $200, and shall deposit such penalty to the credit of the general fund. The department will also inform its agents in the counties of the delinquency, and the agents shall assess a penalty of 1% of the tax due for each month or part of a month the report is delinquent."

Section 3. Section 15-23-602, MCA, is amended to read:

"15-23-602. Statement of sales proceeds. Each operator or producer of natural gas, petroleum, or other crude or mineral oil must on or before *April 15* in each year make out and deliver to the department of revenue a statement of the gross sales proceeds of such natural gas, petroleum, or other crude or mineral oil from each well owned or worked by such person during the next preceding calendar year. The gross sales proceeds shall be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well. Such statement shall be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of such corporation, association, or partnership. Such statement shall show the following:

(1) the name and address of the operator, together with a list in duplicate of the names and addresses of any and all persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the well;

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(3) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil sold from the well during the period covered by the statement;

(4) the gross sales proceeds in dollars and cents or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold;

(5) actual cost of extracting product from well;

(6) cost of construction, repairs, and betterments;

(7) actual cost of fire insurance and workers' compensation insurance;

(8) the amount paid or withheld in satisfaction of liability for excise taxes imposed by the U.S. government on the production, sale, or removal of the natural gas, petroleum, or other crude or mineral oil reported pursuant to subsection (3), including a separate statement of the amount of such taxes paid or withheld from each royalty owner."

Section 4. **Effective date — applicability date.** This act is effective on passage and approval and is applicable to reports or returns filed after December 31, 1982.

Approved April 21, 1983.

CHAPTER NO. 607

AN ACT REQUIRING THAT THE LAST CAR OF ANY FREIGHT TRAIN OPERATING WITHIN THE STATE BE AN OCCUPIED CABOOSE; AMENDING SECTION 69-14-232, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-232, MCA, is amended to read:

"69-14-232. Caboose required to be rear train car — size and equipment of caboose. *(1) Every railroad must place, as the last car on any freight train required by federal railroad administration rules to have its air system and cars inspected by qualified inspecting employees at any designated inspection point and between said inspection points and operating within the state, a caboose occupied by at least one employee of the railroad. A caboose is required on all through-freight, local, and work trains. Provided however, a caboose is not required on a train operating within railroad yard or switch limits as presently established, or on a through-freight if not more than 2,000 feet in overall length operating within an automatic block signal system or within centralized traffic control limits.*

(2) Cabooses shall be at least 24 feet in length, exclusive of platforms, and shall be provided with a door in each end and with cupolas or bay windows, platforms, guardrails, grabirons, and steps for the safety of persons in alighting or getting on cabooses. Cabooses shall be of metal frame

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construction and be sufficiently insulated to eliminate track and other related noise above 85 decibels in any octave in the speech range. Other requirements for cabooses are as follows:

(a) The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and shall have at least two four-wheel trucks with standard steel wheels or their equivalent. Draft gears shall have a minimum travel of 2 ½ inches and a minimum capacity of 18,000 foot-pounds and shall comply with Association of American Railroads Standard M-901 or its equivalent.

(b) Electric lighting of at least 40 foot-candles shall be provided for direct illumination of the caboose desk, reading areas, and lavatory facilities.

(c) A spotlight shall be provided on the rear of the caboose with sufficient candlepower to illuminate the track for a distance of at least 300 feet to the rear of the caboose during the hours of darkness.

(d) The caboose marker or markers shall be either reflectorized or capable of illumination when required.

(e) Only glass of the safety-glass type shall be used in partitions, doors, windows, or wind deflectors.

(f) All seats and seat backs shall conform to the safety standards designated by the United States department of transportation in its "Federal Motor Vehicle Safety Standards", Motor Vehicle Safety Standard No. 201. All edges and protrusions on seats and seat backs shall be rounded to prevent injury to employees.

(3) Any person, corporation, or company, operating any railroad or railway in this state, violating any of the provisions of this section and 69-14-233 is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $1,000 for each offense."

Approved April 21, 1983.

CHAPTER NO. 608

AN ACT TO INCREASE THE CIGARETTE SALES TAX IN ORDER TO FINANCE LONG-RANGE BUILDING BONDS; AMENDING SECTIONS 16-11-111, 16-11-119, AND 17-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax. From and after July 1, 1981, there is hereby levied, imposed, and assessed and there shall be collected and paid to the state of Montana upon cigarettes sold or possessed in this state the following excise tax which shall be paid prior to the time of sale and delivery thereof: *16* cents on each package containing not more than 20 cigarettes and, when packages contain more than 20 cigarettes, then *16* cents on each 20 or fraction of 20 cigarettes contained in such package."

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Section 2. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes — retirement of bonds. All moneys collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by said section, shall be paid to the state treasurer and deposited as follows: *79.75%* in the long-range building program account in the sinking fund, and *20.25%* in the long-range building program account in the bond proceeds and insurance clearance fund."

Section 3. Section 17-5-408, MCA, is amended to read:

"17-5-408. Percentage of income, corporation license, and cigarette tax pledged. (1) The state pledges and appropriates and directs to be credited as received to the sinking fund account 11% of all money, except as provided in 15-31-702, received from the collection of the income tax and the corporation license tax referred to in 15-1-501 and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4), provided that no more than 11% of such tax collections shall be deemed to be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the sinking fund account *79.75%* of all money received from the collection of the *16-cent* excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 4. **Effective date.** This act is effective July 1, 1983.

Approved April 21, 1983.

CHAPTER NO. 609

AN ACT AUTHORIZING ESTABLISHMENT OF COUNTY WEATHER MODIFICATION AUTHORITIES WITH TERMINATION AFTER 5 YEARS; PROVIDING FOR A LEVY OF UP TO 2 MILLS EACH YEAR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Authority" means a county weather modification authority established pursuant to [section 2, 6, 8, or 10].

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(2) "Commissioner" means a county weather modification authority commissioner appointed pursuant to [section 2, 6, 8, or 10].

Section 2. **Weather modification authority created by petition — expiration — reinstatement.** (1) Upon receipt of a valid petition signed by at least 51% of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding general election, a board of county commissioners may by resolution create a weather modification authority. The board of county commissioners shall appoint five residents of the county as weather modification authority commissioners from those names set forth in the petition and designated by the petitioners to be appointed commissioners. If any of the five candidates named in the petition to be appointed commissioner is unable or refuses for any reason to accept appointment as commissioner or is disqualified by not meeting residence requirements as an elector in the county, the board of county commissioners shall name an appointee to fill the position. Each commissioner shall serve a 5-year term of office. If any commissioner submits his resignation in writing to the board of county commissioners or becomes unable or disqualified for any reason after accepting office, the board of county commissioners shall name an appointee to fill the vacancy. The board of county commissioners may remove any commissioner from office whenever it appears, by competent evidence and after hearing, that the commissioner has been guilty of misconduct, malfeasance, crime in office, or gross incompetency. A vacancy occurring otherwise than by expiration of term of office must be filled for the unexpired term.

(2) Any authority created pursuant to this section expires 5 years after the date of the initial appointment of the commissioners. Any unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid must be transferred into the county general fund by the officers of the authority on or before the 5-year termination date provided by this section. However, all unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid shall remain in the name of the authority if the board of county commissioners of such county by resolution creates a weather modification authority and all its powers in accordance with [section 6].

(3) Nothing in this section prevents renewal of an authority for another 5 years by petition of the qualified electors in the same manner as the initial authority was created.

(4) If more than one petition is filed with the board of county commissioners on or about the same time, the petition with the highest percentage of the qualified county electors voting for the office of governor at the last preceding general election must be selected by the board of county commissioners. However, the petition with the highest percentage must have the signatures of at least 40% of the qualified electors in the county, and the sum total of all qualified electors signing all petitions filed must equal at least 60% of the qualified electors in the county. If the name of the same elector appears on two or more petitions, the name must be stricken from both petitions.

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Section 3. **Petition content.** (1) The petition for the creation of a weather modification authority and for appointment of commissioners shall contain:

(a) a title with the heading "Petition for Creation of (insert name of county) Weather Modification Authority";

(b) the following paragraph: We, the undersigned qualified electors of (name of county), state of Montana, request that the (name of county) board of county commissioners create by resolution a (name of county) weather modification authority and appoint the following five qualified electors of the county to 5-year terms of office as commissioners for the (name of county) weather modification authority:

(Here insert the name and address of each proposed commissioner for the (name of county) weather modification authority.)

(c) the following paragraph: We, the undersigned qualified electors of the (name of county), state of Montana, are notified that the creation of the (name of county) weather modification authority and the appointment of its commissioners by the (name of county) board of county commissioners will grant the authority the power to certify to the board of county commissioners a mill levy tax not to exceed 2 mills upon the net taxable valuation of property in the county for a weather modification fund, which tax may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes and that such fund must be used for weather modification activities as provided by [section 12]. We, the undersigned, understand that the authority requested in this petition expires 5 years after the creation of the weather modification authority, except that the board of county commissioners may by resolution create a weather modification authority and all its powers, including the power to certify a tax levy as provided in [section 5], for one or more 5-year periods in accordance with [section 6].

(d) A heading, "Committee for Petitioners", followed by this statement: The following electors of (name of county), state of Montana, are authorized to represent and act for us and shall constitute the "Committee for the Petitioners" in the matter of this petition and all acts subsequent thereto.

(2) All signatures to such petition must be numbered and dated by month, day, and year. The name must be written, with residence address and post-office address, including the county of residence.

(3) An affidavit must be attached to each petition and sworn to under oath before a notary public by the person circulating each petition, attesting to the fact that he circulated the petition and that each of the signatures to the petition is the genuine signature of the person whose name it purports to be and that each such person is a qualified elector in the county in which the petition was circulated.

Section 4. **Commissioners — compensation — meetings — officers — disbursements.** (1) A commissioner may receive no compensation for his services. Certificates of appointment must be filed with the county clerk and recorder.

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(2) The powers of each authority are vested in its commissioners. A majority of the commissioners constitutes a quorum for the purpose of conducting the business of the authority. A majority of the commissioners constitutes a quorum, but action may not be taken by the authority except by an affirmative vote of not less than a majority of all the commissioners. A chairman, vice-chairman, secretary, and treasurer must be elected from among the commissioners. An authority may delegate to one or more of its commissioners such powers or duties as it considers proper.

(3) The secretary shall keep minutes of official meetings and shall include all official business, such as operations requested, and all authorizations for payment of weather modification authority funds.

(4) Disbursements authorized by the authority must be made by check signed by the chairman and the treasurer of the authority. Official policies must be entered into the minutes. An annual report must disclose funds received and expended, and a copy of the report must be filed with the county clerk and recorder. The annual report must be presented at a public meeting called for such purpose.

Section 5. **Tax certified by weather modification authority — disposition of proceeds.** (1) The authority may certify annually to the board of county commissioners a tax of not to exceed 2 mills upon the taxable valuation of the property in the county for a weather modification fund. The tax must be levied by the board of county commissioners and may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes. The weather modification fund may be used only for weather modification activities as provided by [section 12]. The tax certified by the authority is limited to the period of existence of the authority.

(2) The money in the weather modification fund must be invested to earn interest at the rate most advantageous to the fund, consistent with law and prudent business practice.

Section 6. **Creation of authority by resolution.** (1) When an authority is about to expire, the board of county commissioners may by resolution authorize the creation of such weather modification authority and all its powers, including the power to certify a tax levy as provided by [section 5], for an additional 5-year period if the resolution authorizing the creation of such authority is adopted by the board of county commissioners before the date prescribed in the preceding resolution for its termination. Upon passing such resolution for the creation of the authority, the board of county commissioners shall appoint five commissioners to 5-year terms of office, subsequently filling vacancies in the manner prescribed by [section 2].

(2) The board may create the authority for subsequent 5-year periods by following the procedure provided in this section.

Section 7. **Procedure for abolishment of authority by recall petition — petition form — disposition of funds.** (1) After 51% of the qualified electors of a county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, petition the

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board of county commissioners of their county to recall the commissioners of an authority created pursuant to [section 2] and to abolish the authority, the board of county commissioners shall adopt a resolution recalling all commissioners of such authority and abolishing their offices and the authority until a weather modification authority is created by petition in accordance with [section 2].

(2) A recall petition must have a title with the heading, "Recall Petition for the Abolishment of (insert name of county) Weather Modification Authority". The recall petition must incorporate a paragraph stating its purpose in clear language and must comply with all requirements prescribed in subsections (1)(d), (2), and (3) of [section 3] relating to petition content, committee for petitioners, petition details, affidavits, and persons circulating such petitions.

(3) If the board of county commissioners adopts a resolution recalling all commissioners of a weather modification authority and abolishing the authority, all unexpended funds remaining in the name of the authority, after all proper bills and expenses have been paid, must be transferred to the county general fund by the weather modification authority commissioners on the effective date of the resolution. If outstanding valid bills are unpaid after that date, the board of county commissioners may pay such obligations from money in the county general fund.

Section 8. **Creation of authority by election.** When a petition signed by not less than 20% of the qualified electors of the county, as determined by the vote cast for the office of governor at the last preceding gubernatorial election, requesting an election upon the establishment of a weather modification authority is presented to the board of county commissioners not later than 90 days prior to the next general election, the board of county commissioners shall submit the question to the electors of the county at the next general election. Upon approval by a majority of the votes cast, the board of county commissioners shall by resolution establish an authority as described in [section 2] with all powers set out in [this act], including the power to certify a tax levy as provided by [section 5].

Section 9. **Abolishment of authority by election.** When a petition signed by not less than 20% of the qualified electors of the county, as determined by the vote cast for governor in the last preceding gubernatorial election, requesting an election upon the abolishment of an authority created pursuant to [section 6 or 8] is presented to the board of county commissioners not later than 90 days prior to the next general election, the board of county commissioners shall submit the question to the electors of the county at the next general election. Upon approval by a majority of the votes cast, the board of county commissioners shall abolish the authority as of December 31 following the election. All unexpended funds remaining in the name of the authority after all proper bills and expenses have been paid must be deposited in the general fund of the county.

Section 10. **Creation of authority by vote after resolution of county commissioners.** The board of county commissioners of any county may, by resolution after a public hearing, submit the question of the creation of a weather modification authority to the electors of the

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county at the next countywide election. Upon approval by a majority of the votes cast, the board of county commissioners shall pass a resolution creating an authority as described in [section 2]. Such an authority has all powers provided by this chapter, including the authority to levy a tax as provided by [section 5].

Section 11. **County budget waived for first appropriation — conditions.** The provisions of 7-6-2342 apply if an emergency condition requiring prompt expenditure occurs immediately after an authority has been created by resolution of the board of county commissioners and after certification of a mill levy by the authority. In that case and only for the initial or first appropriation for the authority, the county commissioners may appropriate from money not otherwise appropriated in the general fund, money necessary to carry out the provisions of [this act]. However, the appropriation may not exceed an amount equal to the amount that would be raised by a 2-mill levy upon the taxable valuation of the property in the county.

Section 12. **Declaration of emergency — hearing — determination of need for weather modification operation.** (1) After receiving a petition requesting an operation to increase precipitation, initiate precipitation, or suppress hail and bearing the signatures of at least 50 registered electors of the county, the commissioners of an authority shall, within 15 days after receiving the petition, publish notice of a public hearing on the request at least once in a newspaper of general circulation published within the county and conduct the hearing.

(2) If after the hearing a majority of the commissioners finds that a weather emergency exists requiring such an operation, the authority may proceed with the activities needed to initiate and conduct the requested operation.

Section 13. **Codification instruction.** Sections 1 through 12 are intended to be codified as an integral part of Title 85, chapter 3, and the provisions of Title 85, chapter 3, apply to sections 1 through 12.

Section 14. **Effective date.** This act is effective on passage and approval.

Approved April 25, 1983.

CHAPTER NO. 610

AN ACT TO ALLOW AN ELECTRIC OR GAS UTILITY TO PURCHASE OR INVEST IN COST-EFFECTIVE ENERGY CONSERVATION; TO REQUIRE THE PUBLIC SERVICE COMMISSION TO INCLUDE CONSERVATION IN A UTILITY'S RATE BASE; TO ALLOW THE PUBLIC SERVICE COMMISSION TO ALLOW A HIGHER INCREMENTAL RATE OF RETURN ON CONSERVATION; AMENDING SECTION 15-32-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Avoided costs" means the incremental costs, as determined by the commission, to an electric or natural gas utility of energy or capacity, or

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both, which, but for the purchase of conservation, the utility would generate or supply itself or purchase from another source.

(2) "Commission" means the Montana public service commission created in 2-15-2602.

(3) "Conservation" means any reduction in electric power or natural gas consumption as a result of investment in measures that increase the efficiency of electricity or gas use in building shells, space heating or cooling equipment, water heating equipment, or refrigeration equipment or other cost-effective measures which, over its economic life meet the criteria of [section 3].

(4) "Residential building" means a building used for residential occupancy that:

(a) was fully constructed and habitable as of [the effective date of this act];

(b) has a system for heating, cooling, or both, that uses a fuel supplied by the utility; and

(c) contains at least one but not more than four separately or centrally heated dwelling units or contains more than four separately heated or cooled or both heated and cooled units.

Section 2. **Utility investment in or purchase of conservation — approval by commission.** (1) A utility may:

(a) purchase conservation from a person or private firm; or

(b) directly engage in conservation investments.

(2) The conservation purchases or investments provided for in subsection (1) are subject to approval by the commission.

(3) Cost-effective conservation measures approved by the commission may, at the customer's discretion, be installed by either:

(a) a person or a private firm;

(b) the customer himself; or

(c) the utility.

Section 3. **Eligible conservation.** Conservation purchases or investments are eligible under [sections 1 through 6] if they are made to replace, upgrade, or enhance building shells, space heating or cooling equipment, or refrigeration equipment which was installed and in operation in the existing residential building as of [the effective date of this act] and are determined by the commission to cost no more than 50% of the utility's avoided costs.

Section 4. **Commission to include conservation in rate base — rate of return.** (1) In order to encourage the purchase of or investment in conservation by a utility, the commission shall include conservation purchases or investments eligible under [section 3] and in compliance with criteria adopted under [section 5] in a utility's rate base.

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(2) In establishing such rate of return the commission may allow an increment of up to 2% added to the rate of return on common equity permitted on the utility's other investments.

(3) The commission shall allow the rate of return increment provided for in subsection (2) for a period not to exceed 30 years after the conservation is first placed in the rate base.

(4) The commission shall prescribe amortization periods for conservation that is included in a utility's rate base.

Section 5. **Criteria for allowable conservation — onsite audits.** (1) The commission shall approve cost-effectiveness criteria for conservation that will be placed into a utility's rate base under [sections 1 through 6].

(2) The commission may conduct onsite energy audits to insure compliance with the criteria established under subsection (1).

Section 6. **Prohibition against utility claiming conservation tax credit.** A utility whose conservation is placed in the rate base under [sections 1 through 6] may not claim the tax credit allowed in 15-32-107.

Section 7. Section 15-32-107, MCA, is amended to read:

"15-32-107. Loans by utilities and financial institutions — tax credit for interest differential. (1) A public utility providing electricity or natural gas may install or pay for the installation of energy conservation materials or recognized nonfossil forms of energy generation systems in a dwelling. The utility may agree with the occupant of the dwelling that the occupant shall reimburse the utility for its expenditure in periodic installment payments added to the occupant's regular bill for electricity or natural gas. The utility may charge interest not exceeding the equivalent of 7% per year on the declining balance of the sum advanced for the installation of energy conservation materials and recognized nonfossil forms of energy generation systems.

(2) A financial institution, as defined in 32-6-103, may offer and make loans at an interest rate not less than 2 percentage points below the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district.

(3) *Except as provided in subsection (6), a* public utility or a financial institution lending money under this section may compute the difference between interest it actually receives on such transactions and the interest which would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the corporation license tax under chapter 31, part 1. The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the corporation license tax under chapter 31, part 1.

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(4) A utility may not claim a tax credit under this section exceeding $500,000 in any tax year. A financial institution may not claim a tax credit under this section exceeding $2,000 in any tax year.

(5) The public service commission may make rules to implement this section as it shall apply to public utilities only.

(6) A public utility whose purchases of or investments in conservation are placed in the rate base as provided in [sections 1 through 6] may not receive a tax credit under subsection (3)."

Section 8. **Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 69, chapter 3.

Approved April 25, 1983.

CHAPTER NO. 611

AN ACT PROVIDING A CIVIL REMEDY FOR THE ISSUANCE OF A CHECK DISHONORED FOR LACK OF FUNDS OR BECAUSE THE ISSUER HAS NO ACCOUNT WITH THE DRAWEE; SETTING FORTH DAMAGES THAT MAY BE RECOVERED; COORDINATING THE REMEDY OF DAMAGES WITH OTHER REMEDIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Issuing a bad check — civil liability.** (1) A person who issues a check, draft, or an order for the payment of money which is dishonored for lack of funds or credit or because he has no account with the drawee is liable to the person to whom the check, draft, or order is issued for damages in a civil action as provided in subsection (2).

(2) The amount of damages awarded pursuant to subsection (1) shall be an amount equal to the greater of $100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was issued has made written demand, mailed to the last known address or the address shown on the check, to the drawer for payment of the amount of such check, draft, or order not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded prior to the commencement of the action.

Section 2. **Coordination with other remedies.** The remedy provided by [section 1]:

(1) may be pursued notwithstanding the provisions of 27-1-312;

(2) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

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(3) does not affect the engagement of the drawer provided for in 30-3-413 to pay the amount of the draft. However, in case of any inconsistency between the provisions of Title 30, chapter 3, the provisions of [section 1] apply.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 25, 1983.

CHAPTER NO. 612

AN ACT TO GRANT TO JUSTICES' COURTS JURISDICTION OVER FIRST OFFENSES OF CRIMINAL POSSESSION OF MARIJUANA AND TO ALTER THE PENALTY; AMENDING SECTIONS 3-10-303 AND 45-9-102, MCA; REPEALING SECTION 45-9-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-303, MCA, is amended to read:

"3-10-303. Criminal jurisdiction. The justices' courts have jurisdiction of public offenses committed within the respective counties in which such courts are established as follows:

(1) jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months or both such fine and imprisonment;

(2) jurisdiction of all violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

(3) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine only not exceeding $1,500; and

(4) jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings."

Section 2. Section 45-9-102, MCA, is amended to read:

"45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and *shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence.* A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year

or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence *of imprisonment.*

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 3. **Repealer.** Section 45-9-201, MCA, is repealed.

Approved April 25, 1983.

CHAPTER NO. 613

AN ACT TO PROVIDE THAT THE DIVISION OF PROPERTY IN A PROCEEDING TO TERMINATE A MARRIAGE IS CONSIDERED TO BE A DIVISION OF COMMON OWNERSHIP INTERESTS OF THE PARTIES; AMENDING SECTION 40-4-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-202, MCA, is amended to read:

"**40-4-202. Division of property.** (1) In a proceeding for dissolution of a marriage, legal separation, or *division* of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to *divide* the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; antenuptial agreement of the parties; the age, health, station, occupation, amount and sources of income, vocational skills, employability,

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estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In *dividing* property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which such contributions have facilitated the maintenance of this property; and

(c) whether or not the property *division* serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

(3) Each spouse is considered to have a common ownership in marital property that vests immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must be determined and made final by the court pursuant to this section.

(4) The division and apportionment of marital property caused by or incident to a decree of dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

(a) the property laws of this state;

(b) the income tax laws of this state; and

(c) the federal income tax laws."

Section 2. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 25, 1983.

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CHAPTER NO. 614

AN ACT BROADENING PRIVILEGES OF SPECIAL PARKING PERMITHOLDERS AND ALLOWING EXEMPTIONS FROM TIME LIMITS; ALLOWING PERMITS FOR TEMPORARILY HANDICAPPED PERSONS; REQUIRING SPECIAL LICENSE PLATES OR CARDS TO BEAR THE WHEELCHAIR EMBLEM; PROVIDING FOR EXPIRATION OF PERMIT ON RECOVERY OR DEATH OF PERMITTEE; AUTHORIZING SPECIAL LICENSE PLATES FOR 100-PERCENT DISABLED VETERANS; PROVIDING A PENALTY; AMENDING SECTIONS 10-2-301, 49-4-301, 49-4-302, 49-4-304, AND 49-4-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-301, MCA, is amended to read:

"49-4-301. Who eligible for special parking permit. (1) The division of motor vehicles, department of justice, shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap that impairs his mobility when not in a motor vehicle;

(b) regardless of whether he holds a driver's license or owns a motor vehicle, has a permanent physical handicap that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination; *or*

(c) has a temporary physical handicap that impairs his driving ability or his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination.

(2) No one applicant may receive more than one permit."

Section 2. Section 49-4-302, MCA, is amended to read:

"49-4-302. Privileges of permitholder — exemptions from time limits. *(1)* The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons *whether on public property or, upon the request of the private property owner, on private property available for public use.*

(2) No vehicle other than one lawfully displaying a parking permit issued under this part and conveying a handicapped person may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and parked in public places along public streets from any time limitation imposed upon parking in such area except in areas where:

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(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic."

Section 3. Section 49-4-304, MCA, is amended to read:

"49-4-304. Special license plate or card to be provided and displayed. *(1)* The division of motor vehicles shall provide a *special license plate or* card *to* be displayed *on or* in a motor vehicle to indicate a parking privilege granted under this part. The *special license plate shall be affixed to the vehicle according to 61-3-301, or the* card shall be prominently displayed in the windshield of a vehicle when the parking privilege is being used *by the handicapped person in a vehicle other than the one to which his special license plate is affixed.*

(2) Upon application under 49-4-303, a handicapped person who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the handicapped person is being conveyed when the parking privilege is being used.

(3) The special license plate or card must each bear a representation of a wheelchair as the symbol of a handicapped person."

Section 4. Section 49-4-305, MCA, is amended to read:

"49-4-305. Expiration of permit. A permit expires on*:*

(1) the death of the permittee; or

(2) certification by a physician that the permittee's physical handicap impairing his mobility no longer exists."

Section 5. Section 10-2-301, MCA, is amended to read:

"10-2-301. License plates to disabled veterans — special inscriptions. *(1)* Any person who is a veteran of the armed service of the United States and 100% disabled because of an injury which has been determined by the veterans administration to be service connected and who is a citizen and resident of the state of Montana and who is the owner of a passenger automobile or of a truck up to and including three-quarter ton GVW-rated capacity shall be provided with *specially inscribed* license plates upon payment of a fee of $5 for such automobile or truck and upon proof of 100% service-connected disability.

(2) The motor vehicle division shall assign to each veteran qualified under subsection (1) who applies according to the rules of the division a registration designation bearing the letters and character "DV-" followed by a number matching the sequence in which the designations are assigned, and the division shall issue to the disabled veteran two special license plates bearing the inscription assigned to him.

(3) The special license plates may be reregistered or renewed upon payment of the fees required in subsection (1) and compliance with the rules of the division."

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Section 6. **Penalty.** A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of not less than $10 or more than $100.

Section 7. **Codification instruction.** Section 6 is intended to be codified as an integral part of Title 49, chapter 4, part 3, and the provisions of Title 49, chapter 4, part 3, apply to section 6.

Section 8. **Effective date.** This act is effective January 1, 1984.

Approved April 25, 1983.

CHAPTER NO. 615

AN ACT PERMITTING A COUNTY GOVERNING BODY TO ORGANIZE COUNTY VOLUNTEER FIRE COMPANIES AND ENTER INTO MUTUAL AID AGREEMENTS FOR FIRE PROTECTION; AMENDING SECTION 7-33-2202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2202, MCA, is amended to read:

"7-33-2202. Functions of county governing body. The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties hereinafter imposed:

(1) The governing body shall:

(a) provide for the organization of volunteer rural fire control crews; *and*

(b) provide for the formation of county volunteer fire companies.

(2) The governing body shall appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as *it considers* necessary.

(3) The county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, protect the range, farm, and forest lands within the county from fire.

(4) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with federal, state, *local,* and other fire protection agencies, including governing bodies of adjoining counties."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 25, 1983.

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CHAPTER NO. 616

AN ACT GENERALLY REVISING THE LAW ON GRANDPARENT VISITATION RIGHTS; AMENDING SECTION 40-9-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-9-102, MCA, is amended to read:

"40-9-102. Grandparent visitation rights. (1) *Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable visitation rights.*

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) No person may petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of the child; the child's parent, guardian, or custodian; or the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when such interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent."

Approved April 25, 1983.

CHAPTER NO. 617

AN ACT TO GENERALLY REVISE THE PROCEDURES FOR CHANGING HIGH SCHOOL DISTRICT BOUNDARIES THROUGH ANNEXATION, CONSOLIDATION, OR TRANSFER OF TERRITORY OF SUCH DISTRICTS; AMENDING SECTIONS 20-6-304, 20-6-311, 20-6-402, AND 20-6-403, MCA; REPEALING SECTIONS 20-6-302, 20-6-305, 20-6-306, AND 20-6-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limitations for boundary changes.** No high school district may be created and no high school district boundary may be changed between the first day of March and the second Monday of August of any calendar year except when:

(1) the entire territory of a high school district is annexed or attached to another high school district;

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(2) the entire territory or portion of a joint high school district located in one county is annexed or attached to another high school district; or

(3) two or more districts are consolidated in their entirety.

Section 2. **District consolidation.** Any two or more high school districts in one county may consolidate to organize a high school district. The consolidation must be conducted under the following procedure:

(1) At the time the consolidation proposition is first considered, the districts involved shall jointly determine whether the consolidation is to be made with or without the mutual assumption of the bonded indebtedness of each district by all districts included in the consolidation proposition.

(2) A consolidation proposition may be introduced, individually, in each of the districts by either of the following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider a consolidation proposition involving their district; or

(b) not less than 20% of the electors of a high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider a consolidation proposition involving their district.

(3) When the county superintendent receives a resolution or a valid petition from each of the districts included in the consolidation proposition, he shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each high school district included in the consolidation proposition to call a consolidation election.

(4) (a) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections.

(b) In addition:

(i) if the districts to be consolidated are to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election must also follow the procedures prescribed in [section 5]; or

(ii) if the districts to be consolidated are not to mutually assume the bonded indebtedness of each district involved in the consolidation, the consolidation election must also follow the procedures prescribed in 20-6-207.

(5) After the county superintendent receives the election certificate provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, he shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, he shall, within 10 days after the receipt of the election certificate, order the consolidation of such districts. If the order is for consolidation with the mutual assumption of bonded indebtedness of each high school district by all districts included in the consolidation

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order, the order shall specify that all taxable real and personal property of the consolidated district shall assume the bonded indebtedness of each district. In addition, the order shall specify the number of the consolidated high school district. The superintendent shall send a copy of the order to the board of county commissioners and to the trustees of each district incorporated in the consolidation order.

(6) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the county superintendent shall notify each district of the disapproval of the consolidation proposition.

Section 3. **Conditions for high school district annexation.** (1) A high school district may be annexed to another high school district located in the same county when:

(a) a third-class district is annexed to a first-class district or a second-class district; or

(b) a second-class district is annexed to a first-class district.

(2) The annexation of high school districts must be conducted under the provisions of [section 4].

Section 4. **High school district annexation procedure.** A high school district may be annexed to another high school district located in the same county when one of the conditions of [section 3] is met in accordance with the following procedure:

(1) At the time the annexation proposition is first considered, the districts involved shall jointly determine whether the annexation is to be made with or without the joint assumption of the bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(2) An annexation proposition may be introduced in the district to be annexed by either of the following methods:

(a) the trustees may pass a resolution requesting the county superintendent to order an election to consider an annexation proposition for their district; or

(b) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent requesting an election to consider an annexation proposition for their district.

(3) Before ordering an election on the proposition, the county superintendent must receive from the trustees of the annexing district a resolution giving him the authority to annex such district.

(4) When the county superintendent receives authorization from the annexing district, he shall, within 10 days after the receipt of the resolution or a valid petition from the district to be annexed and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

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(5) (a) The district shall call and conduct an election in the manner prescribed in this title for school elections.

(b) In addition:

(i) if the district to be annexed is to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election must also follow the procedures prescribed in [section 5]; or

(ii) if the district to be annexed is not to jointly assume with the annexing district the bonded indebtedness of the annexing district, the annexation election must also follow the procedures prescribed in [section 6].

(6) After the county superintendent receives the election certificate provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by such election, he shall order the annexation of the territory of the high school district voting on such proposition to the high school district that has authorized the annexation to its territory. The order must be issued within 10 days after the receipt of the election certificate and, if it is for annexation with the assumption of bonded indebtedness, must specify that all the taxable real and personal property of the annexed territory shall jointly assume with the annexing district the existing bonded indebtedness of the annexing district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts involved in the annexation order.

(7) If the annexation proposition is disapproved in the district to be annexed, it fails and the county superintendent shall notify each district of the disapproval of the annexation proposition.

Section 5. **Consolidation or annexation election with assumption of bonded indebtedness.** A consolidation election involving the mutual assumption of bonded indebtedness by the high school districts to be consolidated as prescribed in [section 2] or an annexation election involving the joint assumption of bonded indebtedness by the high school districts to be annexed as prescribed in [section 4] must comply with the following procedures in addition to those prescribed by this title for other school elections:

(1) In a consolidation election the ballots must read, after stating the consolidation proposition, "FOR consolidation with assumption of bonded indebtedness" and "AGAINST consolidation with assumption of bonded indebtedness".

(2) In an annexation election the ballots must read, after stating the annexation proposition, "FOR annexation with assumption of bonded indebtedness" and "AGAINST annexation with assumption of bonded indebtedness".

(3) Any elector qualified to vote under the provisions of 20-20-301 may vote.

(4) When the trustees in each high school district conducting an election canvass the vote under the provisions of 20-20-415, they shall decide according to the following procedure if the proposition has been approved:

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(a) determine if a sufficient number of the qualified electors of the district voted to validate the election and voted to approve the election proposition in the manner required for bond elections by 20-9-428; and

(b) if the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition.

(5) If the proposition is disapproved under the provisions of subsection (4)(a), the proposition is disapproved in the district.

Section 6. **Consolidation or annexation election without assumption of bonded indebtedness.** (1) A consolidation election without the assumption of bonded indebtedness by the high school districts to be consolidated as prescribed in [section 2] or an annexation election without the joint assumption of bonded indebtedness by the high school district to be annexed as prescribed in [section 4] must be conducted in the manner prescribed by this title for school elections. Any elector qualified to vote under the provisions of 20-20-301 may vote at the election.

(2) In a consolidation election the ballots must read, after stating the consolidation proposition, "FOR consolidation without assumption of bonded indebtedness" and "AGAINST consolidation without assumption of bonded indebtedness". The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition; otherwise, it is disapproved.

(3) In an annexation election the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting approve the proposition; otherwise, it is disapproved.

Section 7. **Transfer of territory from one high school district to another.** (1) A majority of electors of any high school district who are qualified to vote under the provisions of 20-20-301 and who reside in territory that is a part of a high school district may petition the county superintendent to transfer such territory to another high school district if:

(a) the territory adjoins the district to which it is to be attached;

(b) the territory is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;

(c) the transfer of such territory will not reduce the taxable value of the district to less than $300,000 unless the remaining territory of the district contains not less than 50,000 acres of nontaxable Indian land; and

(d) the board of trustees of the school district that would receive the territory has approved the transfer.

(2) The petition must be addressed to the county superintendent and shall:

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(a) describe the territory that is requested to be transferred and to what district it is to be transferred;

(b) state the reasons why such transfer is requested; and

(c) state the number of high-school-age children residing in such territory.

(3) On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) file the petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices must be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one notice posted in the territory to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of either affected district must be heard. If the county superintendent considers it advisable and in the best interests of the residents of the territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall by order deny the request. Either of the orders shall be final 20 days after its date unless it is appealed to the superintendent of public instruction by a resident of either district affected by the territory transfer. The decision of the superintendent of public instruction, after consideration of the material presented at the county superintendent's hearing, is final 30 days after its date.

(5) If a petition to transfer territory from one high school district to another high school district would create a joint high school district or affect the boundary of any existing joint high school district, the petition must be presented to the county superintendent of the county where the territory is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly by such county officials.

Section 8. **High school district consolidation of districts in two or more counties.** Any two or more high school districts located in two or more counties and whose territory is contiguous may consolidate to organize a joint high school district. Whenever a joint district consolidation is considered by two or more districts, the procedure for consolidation with the assumption of bonded indebtedness prescribed in [section 2] and [section 6] must be used, except that each district shall submit its resolution or petition and its election certificate to the county superintendent of its resident county and the several county superintendents shall jointly perform the duties prescribed for the county superintendent in [section 2].

Section 9. Section 20-6-304, MCA, is amended to read:

"20-6-304. High school boundary commission — procedure for division of county into high school districts. (1) Each county of

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the state of Montana shall have a high school boundary commission consisting of the board of county commissioners and the county superintendent. Whenever a county superintendent receives a resolution from the trustees of any high school district requesting *the commission* to divide the county into high school districts, he shall immediately notify the high school boundary commission. Such commission shall set a time, date, and place for a public hearing on the request. The hearing shall be set for a date within 60 days after the receipt of the request, and any interested person may appear and be heard on such request. The county superintendent shall send a written notice of the public hearing on a requested division to the trustees of each elementary district of the county which has territory that would be affected by the change. The county superintendent shall also give notice of such public hearing in accordance with the requirement for school election notices prescribed by school election provisions of this title. The certificate of the county superintendent filed with the high school boundary commission reciting that such notice requirements have been satisfied shall be conclusive.

(2) In considering a request to divide the county into high school districts, the high school boundary commission shall give primary consideration to the convenience of the high school pupils of the territory under consideration. Such commission also shall consider the grouping of elementary districts to be encompassed by a high school district or districts and shall group contiguous elementary districts within a high school district unless obstacles of travel, such as mountains, rivers, impractical routes of travel, or distance, make such grouping impractical. After the hearing, the high school boundary commission shall order the division of the county into high school districts whenever requested under the provisions of 20-6-303. *The* commission's discretion shall extend only to the establishing of boundaries for the newly created high school district or districts."

Section 10. Section 20-6-311, MCA, is amended to read:

"20-6-311. High school district boundary approval by superintendent. Whenever a high school boundary commission orders a division of the county *into high school districts* under *20-6-304*, its order shall not be final until it has been approved by the superintendent of public instruction. The superintendent of public instruction shall not approve any high school boundary commission order that:

(1) is dated less than 1 year since the last high school boundary commission order was approved for such county; *or*

(2) has not been confirmed by the high school boundary commission of each county affected by the boundary change when it involves a joint high school district."

Section 11. Section 20-6-402, MCA, is amended to read:

"20-6-402. Voluntary consolidation and annexation incentive plan. Sections 20-6-401 through 20-6-408 shall be known as the voluntary consolidation and annexation incentive plan. The purpose of this plan is to provide additional financial assistance to school districts that consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208 for

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elementary school districts or *[section 2] or [section 4]* for high school districts."

Section 12. Section 20-6-403, MCA, is amended to read:

"20-6-403. Application for bonus payment. Whenever two or more elementary school districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208 or two or more high school districts consolidate *or annex* under the provisions of *[section 2] or [section 4]*, the enlarged district may make application for the bonus payment as provided herein if such consolidation or annexation shall result in the dissolution of at least one elementary or high school district. Application for the bonus payments must be made during the school year of the order creating the enlarged school district."

Section 13. **Repealer.** Sections 20-6-302, 20-6-305, 20-6-306, and 20-6-310, MCA, are repealed.

Section 14. **Codification instruction.** Sections 1 through 8 are intended to be codified as an integral part of Title 20, chapter 6, part 3, and the provisions of Title 20 apply to sections 1 through 8.

Approved April 25, 1983.

CHAPTER NO. 618

AN ACT TO ALLOW CITIES AND TOWNS TO INCREASE THE PENALTY FOR DISCHARGING FIREARMS WITHIN THE LIMITS OF A CITY OR TOWN; AMENDING SECTION 45-8-343, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-343, MCA, is amended to read:

"45-8-343. Firing firearms. (1) Except as provided in subsections (2) and (3), every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding $25 *or such greater fine or a term of imprisonment, or both, as the town or city may impose.*

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1."

Approved April 25, 1983.

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CHAPTER NO. 619

AN ACT PROVIDING FOR THE ALLOCATION OF METALLIFEROUS MINES LICENSE TAXES TO THE GENERAL FUND AND TO AN IMPACT TRUST ACCOUNT; RESTRICTING THE USES OF THE IMPACT TRUST ACCOUNT; PROVIDING FOR A SMALL MINER'S EXEMPTION FROM THE METALLIFEROUS MINES LICENSE TAX; AMENDING SECTIONS 15-1-501, 15-37-101, 15-37-103, AND 90-6-303 THROUGH 90-6-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disposition of metalliferous mines license taxes.** Metalliferous mines license taxes collected under the provisions of this part are allocated as follows:

(1) to the credit of the general fund of the state, 67% of total collections each year;

(2) to the earmarked revenue fund to the credit of a hard-rock mining impact trust account, 33% of total collections each year.

Section 2. **Basis for awarding grants and loans from the hard-rock mining impact trust account — restrictions.** (1) Whenever the board determines that a mining operation has permanently ceased all mining-related activity or has experienced at least a 50% reduction in its full-time equivalent mining work force over the immediately preceding 5-year period, the board may in its discretion award grants and loans from the hard-rock mining impact trust account to an affected local government unit in accordance with subsection (2).

(2) The board may award grants and loans to assist a local government unit in efforts to:

(a) pay for outstanding capital project bonds or other expenses incurred at least 5 years prior to the end of mining activity or the reduction in a work force as specified in subsection (1);

(b) decrease unusually high property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within a local government unit;

(d) attract new industry to the impact area; and

(e) provide cash incentives for expanding the employment base of the impact area.

(3) Not more than 50% of the money available in the hard-rock mining impact trust account may be granted or loaned for the purpose of assisting local governments under (a) and (b) of subsection (2).

(4) The amount of money that is available to be granted or loaned to a local government unit within an impact area may not exceed the balance

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in the hard-rock mining impact trust account credited to that area under the provisions of [section 3] and 90-6-304.

Section 3. **Eligibility for grants and loans from county accounts — board rules.** (1) The hard-rock mining impact trust account must be maintained on a county-by-county basis. Any local government unit in the state directly impacted by the cessation or reduction of mining-related activity may apply to the board for impact grants or loans from the account for the county in which such cessation or reduction occurred.

(2) The board shall determine to what degree a local government unit is directly impacted by a cessation or reduction in mining-related activity, and such determination is final. The board shall adopt rules that provide a procedure for designating local government units and areas impacted by the cessation or reduction of mining-related activity.

Section 4. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of moneys from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) automobile driver's license fees under subsections (1) through (6) of 61-5-111;

(b) electric energy producer's license taxes under chapter 51;

(c) oil and gas severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes under chapter 31, except as provided in 15-31-702, shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, excluding that allocated to the counties under 15-31-702, corporation income tax, and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code."

Section 5. Section 15-37-101, MCA, is amended to read:

"15-37-101. License tax on metal mines. (1) Every person who engages in or carries on the business of working or operating any mine or

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mining property in the state of Montana from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones of any kind shall be mined, extracted, or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for each year when engaged in or carrying on such business, work, or operations pay to the department of revenue for the exclusive use and benefit of the state of Montana *and impacted local government units* a license tax for engaging in and carrying on such business, work, or operation in this state.

(2) Nothing contained in this part shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims or any annual assessment work or work required in the obtaining of title to mining property from the United States or required by the laws of the United States or of this state in order to hold possessory title to any mining claims be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property."

Section 6. Section 15-37-103, MCA, is amended to read:

"15-37-103. Rate of tax. The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced shall be an amount computed on the gross value of product which may have been derived by such person from such business, work, or operation within this state during the calendar year immediately preceding, at the following rates:

Gross Value of Product	Rate of Tax (percentage of gross value)
first $250,000	*0%*
more than $250,000 and not more than *$500,000*	*.5%* of the increment
more than *$500,000* and not more than *$1,000,000*	*1%* of the increment
more than *$1,000,000*	*1.5%* of the increment"

Section 7. Section 90-6-303, MCA, is amended to read:

"90-6-303. Chairman — meetings — facilities — funding. (1) The board shall elect a chairman from among its members.

(2) The board shall meet as necessary or as called by the chairman or a majority of the members.

(3) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

(4) The administrative and operating expenses of the board shall be paid from revenue *deposited to the credit of the hard-rock mining impact*

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trust account from the license tax on metal mines imposed under Title 15, chapter 37."

Section 8. Section 90-6-304, MCA, is amended to read:

"90-6-304. Accounts established. *(1)* There is within the earmarked revenue fund a hard-rock mining impact account. Moneys are payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the hard-rock mining impact board.

(2) There is within the earmarked revenue fund a hard-rock mining impact trust account. Money is payable into this account under the provisions of [section 1]. After deducting the administrative and operating expenses of the board as provided in 90-6-303, money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the hard-rock mining impact board."

Section 9. Section 90-6-305, MCA, is amended to read:

"90-6-305. Hard-rock mining impact board — general powers. (1) The board may:

(a) retain professional staff, consultants, and advisors notwithstanding the provisions of 2-15-121;

(b) adopt rules governing its proceedings *and determinations*;

(c) award grants to local government units subject to 90-6-306;

(d) award grants or loans to local government units from money paid into the hard-rock mining impact trust account subject to the provisions of [sections 2 and 3];

(e) make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

(f) make determinations as provided in 90-6-307, *[sections 2 and 3]*; and

(g) accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board."

Section 10. Section 90-6-306, MCA, is amended to read:

"90-6-306. Basis for awarding grants. Grants, *including those from the hard-rock mining impact trust account*, shall be awarded to local government units on the basis of:

(1) need;

(2) severity of impact from mineral development;

(3) availability of funds; and

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(4) extent of local effort in meeting its needs."

Section 11. **Codification instructions.** (1) Section 1 is intended to be codified as an integral part of Title 15, chapter 37, part 1, and the provisions of Title 15, chapter 37, part 1, apply to section 1.

(2) Sections 2 and 3 are intended to be codified as an integral part of Title 90, chapter 6, part 3, and the provisions of Title 90, chapter 6, part 3, apply to sections 2 and 3.

Section 12. Effective date — applicability. This act is effective July 1, 1985, and applies to taxable years beginning after December 31, 1984.

Approved April 25, 1983.

CHAPTER NO. 620

AN ACT TO PROVIDE FOR CONSOLIDATED FINANCING OF LOCAL PUBLIC EXPENDITURES BY AUTHORIZING THE BOARD OF INVESTMENTS TO LEND MONEY TO MUNICIPALITIES OR OTHER PUBLIC BODIES THROUGH THE PURCHASE OF THEIR SECURITIES BY THE BOARD; TO AUTHORIZE THE BOARD TO RAISE MONEY FOR SUCH LOANS BY ISSUING ITS OWN BONDS AND NOTES PAYABLE OUT OF LOAN REPAYMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [This act] shall be known and may be cited as the "Municipal Finance Consolidation Act of 1983".

Section 2. **Policy and purpose.** (1) It is the policy of the state of Montana to:

(a) foster and promote, by all reasonable means, the provision of efficient capital markets and facilities for borrowing money by counties, cities, towns, school districts, special taxing districts, and other public bodies to pay for capital improvements and other needs as otherwise authorized by law; and

(b) reduce, to the extent possible, costs of local public indebtedness to taxpayers and residents by affording public bodies an appropriate degree of flexibility and choice in the marketing of their debt securities so as to minimize marketing costs and interest rates.

(2) It is the purpose of [this act] to promote the policies stated in subsection (1) by:

(a) creating a means for public bodies to pool, in effect, the debt instruments they are otherwise authorized to offer for sale to the investment community in order to obtain economies of scale and reduce marketing and interest costs; and

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(b) providing additional security for the payment of bonds and notes held by investors and thereby further reducing interest costs.

Section 3. **Liberal construction.** [This act] and the powers granted in [this act] must be liberally construed to effectuate the policies and purposes stated in [this act].

Section 4. **Definitions.** As used in [this act], the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1005.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Local government unit" means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, or other special taxing district.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in [section 21].

Section 5. **Board of investments to implement.** The board of investments may make and enforce orders, rules, and bylaws that are necessary or desirable for the implementation of [this act].

Section 6. **Bonds, bond anticipation notes, and notes of the board.** (1) The board may by resolution, from time to time, issue negotiable notes and bonds to finance loans or refinance its loans to local government units and its purchases of their bonds and notes, to establish or replenish reserves securing the payment of its bonds and notes, and to finance all other expenditures of the board incident to and necessary or convenient to carry out [this act].

(2) The board may by resolution, from time to time:

(a) issue notes to renew notes and bonds to pay notes, including interest;

(b) whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured; and

(c) issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) The board may by resolution, from time to time, in anticipation of the sale of its securities under this chapter, issue temporary notes and renewal notes.

(4) Except as otherwise expressly provided by resolution of the board, every issue of its notes and bonds shall be an obligation of the board payable out of any revenues, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(5) The notes and bonds must be authorized by resolutions of the board, shall bear a date, and shall mature at times as the resolutions provide. The bonds may be issued as serial bonds payable in annual

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installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at a rate or rates; be in denominations; be in a form, either coupon or registered; carry registration privileges; be executed in a manner; be payable in a medium of payment, at places inside or outside the state; and be subject to terms of redemption as provided in resolutions of the board. The notes and bonds of the board may be sold at public or private sale at such prices, which may be above or below par, as are determined by the board.

Section 7. **Participation voluntary.** Use of the financing mechanism created by [this act] is entirely voluntary, and no local government unit may be required to sell its bonds, bond anticipation notes, or notes to the board.

Section 8. **Limitations on amounts.** The board may not:

(1) make any loans to or purchase the bonds or notes of any single local government unit in an amount greater than $500,000 per single loan, bond issue, or note; or

(2) issue any bonds or notes that cause the total outstanding indebtedness of the board under [this act] (except for bonds or notes issued to fund or refund other outstanding bonds or notes) to exceed $25 million.

Section 9. **Purchase of anticipation notes.** Notwithstanding any other provision of law, a local government unit may issue and the board may purchase notes in anticipation of an otherwise authorized sale of municipal securities. In connection with any purchase of anticipation notes, the board may by agreement with the local government unit impose terms, conditions, and limitations that in the board's opinion are proper under the circumstances and for the purposes and security of the board and the holders of its bonds or notes.

Section 10. **Refunding obligations.** (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under [this act], including the payment of any redemption premium and any interest accrued to or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the board are governed by the appropriate provisions of [this act] that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under [this act]. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds of refunding obligations may be invested as provided in Title 17, chapter 6.

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Section 11. **Additional powers of the board.** In addition to all other powers conferred on the board by [this act] or any other law, the board has the power:

(1) to purchase or hold municipal bonds, bond anticipation notes, or notes at prices and in a manner the board considers advisable;

(2) to sell municipal bonds, bond anticipation notes, or notes acquired or held by it at prices without relation to cost and in a manner the board considers advisable;

(3) to invest funds or money acquired by the board as provided in [section 23];

(4) to prescribe the form of application or procedure required of a local government unit for a loan or purchase of its municipal bonds, bond anticipation notes, or notes; fix the terms and conditions of the loan or purchase; and enter into agreements with local government units with respect to loans or purchases;

(5) to render services to local government units in connection with public or private sales of their municipal bonds, bond anticipation notes, or notes that are eligible for purchase by the board under [this act], including advisory and other services, and charge the local government units for such services;

(6) to charge for its costs and services in reviewing or acting upon a proposed loan to a local government unit or a proposed purchase by the board of municipal bonds, bond anticipation notes, or notes of the local government unit, whether or not the loan is made or the municipal bonds, bond anticipation notes, or notes are purchased;

(7) to fix and establish terms, interest rates, and provisions with respect to a purchase of municipal bonds, bond anticipation notes, or notes by the board, including:

(a) the date and maturities of the bonds, bond anticipation notes, or notes;

(b) provisions as to redemption or payment before maturity; and

(c) any other matters judged by the board to be necessary, desirable, or advisable for the purchase or loan;

(8) in connection with any loan to a local government unit or purchase of municipal bonds, bond anticipation notes, or notes of a local government unit, to consider:

(a) the lawfulness and validity of the purpose to be served by the loan or purchase;

(b) the ability of the local government unit to secure borrowed money from other sources and the costs thereof;

(c) the ability of the local government unit to repay the loan, notes, or bonds;

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(d) the priority of need for the particular public improvement or purpose to be financed; and

(e) varying the terms and conditions of its loans or purchases as between various local government units in accordance with their respective priorities and credit worthiness;

(9) to conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material to its information and necessary to carry out [this act];

(10) to issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before the board;

(11) to appoint, employ, or contract for the services of officers, employees, agents, financial or professional advisers, and attorneys and to pay such compensation for their services as the board may determine;

(12) to procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it considers desirable;

(13) to the extent permitted under its contracts with the holders of bonds or notes of the board, to consent to modification of the rate of interest, the time for payment of any installment of principal or interest, or the security for any other term of a bond, bond anticipation note, note, contract, or agreement of any kind to which the board is a party; and

(14) to do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in [this act].

Section 12. **Provisions of bond resolutions.** A resolution authorizing notes or bonds or any issue thereof may contain provisions that must be a part of the contract or contracts with the holders thereof as to:

(1) pledging all or any part of the revenue or funds of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) the setting aside of reserves for sinking funds in the possession of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(3) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;

(4) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(5) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(6) a commitment to employ adequate and competent personnel at reasonable compensation, salaries, fees, and charges as may be determined by

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the board in conjunction with the department and to maintain suitable facilities and services for the purpose of carrying out its programs;

(7) vesting in a trustee such property, rights, powers, and duties in trust as the board determines; and

(8) defining the acts or omissions that constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies may not be inconsistent with the laws of this state and the other provisions of [this act].

Section 13. **Validity of pledge.** A pledge by the board is valid and binding from the time the pledge is made. The revenues, money, or property pledged and thereafter received by the board is immediately subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

Section 14. **Nonimpairment by the state.** In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and a local government unit or between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

Section 15. **Trust indenture.** (1) In the discretion of the board, the bonds or notes of the board may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The board may provide by a trust indenture for the payment of the proceeds of the bonds or notes and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the general overhead cost of the board.

Section 16. **Presumption of validity.** After issuance, all bonds or notes of the board are conclusively presumed to be fully authorized by and issued under all the laws of this state and any person or governmental unit is estopped from questioning their proper authorization, sale, issuance, execution, or delivery by the board.

Section 17. **Signatures of board members.** If any of the board members whose signatures appear on notes or bonds or coupons cease to

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be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes as if the members had remained in office until delivery.

Section 18. **Negotiability of bonds or notes.** Notwithstanding any other provisions of law, a bond or note issued under this chapter is fully negotiable for all purposes of the Uniform Commercial Code, Title 30, chapters 1 through 9, and a holder or owner of a bond or note or of a coupon appurtenant to it, by accepting the bond, note, or coupon, is conclusively presumed to have agreed that the bond, note, or coupon is fully negotiable for all purposes of the Uniform Commercial Code.

Section 19. **Bonds or notes as legal investments.** Notwithstanding the restrictions of any other law, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, money, or other funds belonging to them or within their control in bonds or notes issued under [this act].

Section 20. **Tax exemption of bonds.** Bonds, notes, or other obligations issued by the board under [this act], their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, excepting inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

Section 21. **Reserve fund.** (1) The board shall establish and maintain a municipal finance consolidation act reserve fund, to which there shall be deposited or transferred:

(a) all money appropriated by the legislature for the purposes of the fund in accordance with the provisions of subsection (4);

(b) all proceeds of bonds required to be deposited in the fund by terms of a contract between the board and its bondholders or a resolution of the board with respect to the proceeds of bonds;

(c) the proceeds of any bond issue of the state that is authorized for such purpose;

(d) all other money appropriated by the legislature to the reserve fund; and

(e) any other money or funds of the board that it decides to deposit in the fund.

(2) All money held in the reserve fund shall be used solely for the payment of the principal of or interest on the bonds or notes secured in whole or in part by the fund or the sinking fund payments with respect to the bonds or notes, the purchase or redemption of the bonds or notes, the payment of interest on the bonds or notes, or the payment of any redemption premium required to be paid when the bonds or notes are redeemed prior to maturity. Money in the reserve fund may not be withdrawn at any time

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in an amount that reduces the fund to an amount less than the sum of minimum reserve requirements established in the resolutions or indentures of the board for the fund except, with respect to bonds or notes secured in whole or in part by the fund, for the purpose of making payment when due of principal, interest, redemption premiums, and sinking fund payments for the payment of which other money pledged is not available.

(3) Money in the reserve fund in excess of the required reserve may be withdrawn at any time by the board and transferred to another fund or account of the board established for purposes of [this act], but not to any other fund or account.

(4) Nothing in this section creates a debt or liability of the state.

(5) Notwithstanding any provision of Title 17, chapter 6, the board of investments may lend money for deposit to the reserve fund in an amount equal to any deficiency in the required debt service reserve. The loans shall be made on such reasonable terms and conditions as the board considers proper [and as may be agreed upon between the board and the board of investments], including without limitation terms and conditions providing that the loans need not be repaid until the obligations of the board secured and to be secured by the reserve fund are no longer outstanding.

Section 22. A..itional **funds and accounts.** The board may in its discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to further the accomplishment of the purposes of [this act] or to comply with the provisions of any of its agreements or resolutions.

Section 23. **Investment.** (1) Unless otherwise required by a resolution or agreement of the board, the board may invest funds coming under its control pursuant to [this act] in the same manner as permitted for investment of funds belonging to the state or held by the state treasurer.

(2) Funds from several or all accounts may be combined for investment, and any interest earned shall be prorated and credited to the various contributing accounts on the basis of the amounts thereof invested, calculated according to an average periodic balance or other generally accepted accounting principle. Such proration must be calculated at least once a year or upon a specific request made to the board.

(3) All securities purchased by the board as an investment remain in the custody of the state treasurer until the same are sold, exchanged, retired, or mature and are paid.

Section 24. **Credit of state not pledged.** Obligations issued under the provisions of [this act] do not constitute a liability or obligation or a pledge of the faith and credit of the state but are payable solely from revenues or funds of the board generated or received for purposes of [this act]. An obligation issued under [this act] must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

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Section 25. **Sale or exchange of municipal securities.** (1) Notwithstanding any law applicable to or constituting any limitation on the maximum rate of interest per year payable on bonds or notes or to annual interest cost to maturity of money borrowed or received upon issuance of bonds or notes, every local government unit is authorized to contract to pay interest on or an interest cost per year for money borrowed from the board and evidenced by its municipal securities purchased by the board without regard to any statutory limitations as to rate of interest per year payable or as to annual interest cost to maturity of money borrowed by the local government unit. Every local government unit is authorized to contract with the board with respect to the loan or purchase, and the contract must contain the terms and conditions of such loan or purchase. Every local government unit is authorized to pay fees and charges required to be paid to the board for its services.

(2) Notwithstanding any law applicable to or constituting any limitation on the sale of bonds or notes except the limitation on amount of bonded indebtedness, any local government unit may sell bonds or notes to the board by private negotiated sale, without limitation as to denomination. The bonds or notes may be fully registered or registerable as to principal only or in bearer form or may bear interest at the rate or rates, all in accordance with this section. The bonds or notes may be evidenced in the manner and may contain other provisions not inconsistent with [this act] and may be sold to the board without advertisement at the price or prices as may be determined, all as provided in the proceedings of the governing body of the local government unit pursuant to which the bonds or notes are authorized to be issued. The governing body of the local government unit may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in the manner provided in the proceedings authorizing their issuance. The bonds in changed form or denominations must be exchanged for the surrendered bonds in the same aggregate principal amounts and in such manner that no overlapping interest is paid and the bonds in changed form or denominations bear interest at the same rate or rates and mature on the same date or dates as the bonds for which they are exchanged. If any exchange is made under this subsection, the bonds surrendered by the holders at the time of the exchange must be canceled. The exchange may be made only at the request of the holders of the bonds to be surrendered. The local government unit may require all expenses incurred in connection with the exchange to be paid by the holders.

Section 26. **Care and custody of bonds purchased by the board.** The board may:

(1) enter into agreements or contracts with a bank, trust company, or financial institution, inside or outside the state, as may be necessary, desirable, or convenient, in the opinion of the board, for rendering services in connection with:

(a) the care, custody, or safekeeping of municipal bonds or other investments held or owned by the board pursuant to [this act];

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(b) the payment or collection of amounts payable as to principal or interest; and

(c) the delivery to the board of municipal bonds or other investments purchased by it or sold by it pursuant to [this act];

(2) pay the cost of those services; and

(3) also, in connection with any of the services to be rendered by a bank, trust company, or financial institution as to the custody and safekeeping of its municipal bonds or investments, require security in the form of collateral bonds, surety agreements, or security agreements in such form and amount as, in the opinion of the board, is necessary or desirable.

Section 27. **Insurance or guaranty.** The board may obtain, from a department or agency of the United States or a nongovernmental insurer, insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal on bonds or notes issued by the board or on municipal bonds, bond anticipation notes, or notes of local government units purchased or held by the board.

Section 28. **Default in payment.** If the board or local government unit defaults in the payment of principal or interest on an issue of notes or bonds after they become due, whether at maturity or upon call for redemption, and the default continues for 30 days, or if the board or local government unit fails or refuses to comply with [this act] or defaults in an agreement made with the holders of an issue of notes or bonds, the holders of 25% of the aggregate principal amount of the outstanding notes or bonds of that issue have the right, upon proper application to a court of competent jurisdiction, to have a trustee appointed to represent the holders of those notes or bonds for the purposes provided in [this act].

Section 29. **Powers and duties of trustee on default.** (1) A trustee appointed under [section 28] may:

(a) by civil action enforce all rights of the noteholders or bondholders, including the right to require the board or local government unit to collect rates, charges, and other fees and to collect interest and amortization payments on bonds and notes held by them adequate to carry out a pledge of or an agreement as to the rates, charges, and other fees and of the interest and amortization payments, and to require the board or local government unit to carry out any other agreements with the holders of the notes or bonds and to perform their duties under [this act];

(b) bring a civil action upon the notes or bonds;

(c) by civil action require the board or local government unit to account as if it were the trustee of an express trust for the holders of the notes or bonds;

(d) by civil action enjoin anything that may be unlawful or in violation of the rights of the holders of the notes or bonds;

(e) declare all the notes or bonds due and payable and, if all defaults are made good, then, with the consent of the holders of 25% of the principal amount of the outstanding notes or bonds, annul the declaration and its consequences.

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(2) The trustee, in addition to the powers stated in subsection (1), has all the powers necessary for the exercise of functions specifically set out or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(3) Before declaring the principal of notes or bonds due and payable, the trustee must give 30 days' notice in writing to the governor, the attorney general, and the board or local government unit defaulting.

Section 30. **Exemption from execution and sale.** All property of the board, other than its revenues or funds received pursuant to [this act], is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against such property. A judgment against the board constitutes a charge or lien upon such property.

Section 31. **Annual audit.** The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

Section 32. **Annual report.** By September 1 of each year, the board shall publish a financial report for distribution to the governor, the legislature, and the public. The report must include a statement of the board's current financial position with respect to its activities under [this act], a summary of its activities pursuant to [this act] during the previous year (including a listing of the local governmental securities purchased by the board, a listing of the bonds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under [this act]), an estimate of the levels of such activities for the next year, and a comparison of such activities during the previous year with the estimates of those activities that were made in the previous annual report.

Section 33. **Limitations on board's power.** Under [this act] the board may not:

(1) make loans of money to any person, firm, or corporation other than a local government unit or purchase securities issued by any person, firm, or corporation other than a local government unit as provided in [this act];

(2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and loan association;

(3) be or constitute a bank or trust company within the jurisdiction or under the control of the state banking board, the department of commerce, or the comptroller of the currency of the United States department of the treasury;

(4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state.

Section 34. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part

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of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 35. **Coordination instruction.** If either House Bill No. 100 or House Bill No. 700 is enacted by the 48th legislature and approved by the governor, the definition of "board" in section 4 is changed to the "Montana economic development board" and all references to the "board" in this act, except the reference to the board of investments in subsection (5) of section 21, mean the Montana economic development board. The bracketed language in subsection (5) of section 21 is effective only if either House Bill No. 100 or House Bill No. 700 is enacted by the 48th legislature and approved by the governor.

Section 36. **Effective date.** This act is effective on passage and approval.

Approved April 25, 1983.

CHAPTER NO. 621

AN ACT TO REDUCE THE NUMBER OF CONIFEROUS TREES THAT A PERSON MAY TRANSPORT WITHOUT A BILL OF SALE AND TO REQUIRE AUTHORIZATION OF THE OWNER FOR TRANSPORTATION OF OVER 200 POUNDS OF CONIFEROUS TREE BOUGHS; AMENDING SECTION 76-13-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-601, MCA, is amended to read:

"76-13-601. Unlawful transportation of trees and boughs. (1) No person may transport on the *ways* of this state more than *5* coniferous trees without having in his possession a bill of sale showing his ownership of the trees. The bill of sale shall specify:

(a) the date of its execution;

(b) the name and address of the vendor or donor of the trees;

(c) the name and address of the vendee or donee of the trees;

(d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) Subsection (1) does not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings, or other forest products from which substantially all the limbs and branches have been removed;

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(c) the transportation of coniferous trees by the owner of the land from which they were taken or his agent, provided that agent has in his possession a tax receipt or other evidence indicating the section, township, and range from which the trees were harvested;

(d) the transportation of coniferous trees by a common carrier.

(3) No person may transport on the ways of this state more than 200 pounds of boughs from coniferous trees without written authorization of the owner of the boughs.

(4) A person who violates this section shall be punished by a fine not to exceed $500 or imprisonment not to exceed 6 months, or both."

Section 2. **Definition.** "Ways of this state" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner.

Approved April 25, 1983.

CHAPTER NO. 622

AN ACT TO GENERALLY REVISE THE EMINENT DOMAIN LAWS; AMENDING SECTIONS 70-30-104, 70-30-111, 70-30-201 THROUGH 70-30-203, 70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, AND 70-30-313, MCA; REPEALING SECTIONS 70-30-204 AND 70-30-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in lands subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings or grounds or for permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

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(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

(3) an easement, *leasehold, or other interest, for so long as the interest is necessary for the purpose described in the complaint, or fee simple* when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use."

Section 2. Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, *the plaintiff must show by a preponderance of the evidence that the public interest requires the taking based on the following findings*:

(1) that the use to which it is to be applied is a use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;

(4) that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected."

Section 3. Section 70-30-201, MCA, is amended to read:

"70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of *Titles 25 and 26, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence,* are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter."

Section 4. Section 70-30-202, MCA, is amended to read:

"70-30-202. Jurisdiction and venue — complaint and summons required. All proceedings under this chapter must be brought in the district court of the county in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon. *A summons served under this chapter must contain a notice to the defendant to file and serve an answer. Within 6 months from the date the summons is served, unless the court shortens or enlarges that time for good cause, the court, sitting without a jury, shall commence its trial on the issue of whether a preliminary condemnation order should be issued.*"

Section 5. Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must *allege*:

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

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(2) the names of all owners, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) statements of each of the facts necessary to be found in 70-30-111;

(5) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

(6) a description of each *interest in real property* sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(7) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

Section 6. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court — preliminary condemnation order. (1) The court has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; *or*

(b) *limit the interest in real property sought to be appropriated if in the opinion of the court the interest sought is not necessary.*

(2) If the court *finds and concludes* from the evidence presented that the public *interest requires* the taking of such *interest in real property* and that the *plaintiff has met his burden of proof under 70-30-111*, it must forthwith make and enter a preliminary condemnation order that the condemnation of the *interest in* real property may proceed in accordance with the provisions of this chapter.

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(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the underground gas storage reservoir and for the use in connection with the creation, operation, and maintenance thereof and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property. However, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas. The court shall appoint three persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated, and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.

(4) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration. The preliminary condemnation proceeding shall be tried by the court sitting without a jury."

Section 7. Section 70-30-207, MCA, is amended to read:

"70-30-207. Appointment of commissioners — qualifications — affidavit. (1) *Within 10 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court must appoint* condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) a citizen of the United States and over 18 years of age;

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(b) that he is not more than 70 years of age;

(c) that he is in possession of natural faculties, of ordinary intelligence, and not decrepit;

(d) that he is possessed of sufficient knowledge of the English language;

(e) that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending;

(f) that he has not been convicted of malfeasance in office or any felony or other high crime;

(g) that he is not related within the sixth degree to any party;

(h) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court."

Section 8. Section 70-30-308, MCA, is amended to read:

"70-30-308. How payment made — execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) on an annual basis, utilizing the installment contract method; *or*

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned.

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution,

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the court, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff."

Section 9. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation — contents — vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified."

Section 10. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his *statement of claim of just compensation under 70-30-207* or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the plaintiff on account thereof be stayed until such time.

(2) If the defendant fails to file a statement of claim of just compensation within the time specified in 70-30-207, the plaintiff may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim.

(3) However, where an appeal is taken by such defendant, the court may, in its discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the *court* and to be in such sum as the court may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

(4) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes

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of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than 75% of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings."

Section 11. Section 70-30-313, MCA, is amended to read:

"70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best reasonably available use and its value for such use, *provided current use may not be presumed to be the highest and best use*;

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered."

Section 12. **Repealer.** Sections 70-30-204 and 70-30-205, MCA, are repealed.

Section 13. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun prior to the effective date of this act.

Approved April 25, 1983.

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CHAPTER NO. 623

AN ACT REQUIRING REPORTING BY HEALTH CARE PROFESSIONALS AND OTHER PERSONS OF INCIDENTS OF ABUSE, NEGLECT, AND EXPLOITATION OF OLDER PERSONS; SPECIFYING THE USE OF THE REPORTS; PROVIDING FOR IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY; SPECIFYING THE DUTIES OF THE DEPARTMENTS OF HEALTH AND ENVIRONMENTAL SCIENCES AND SOCIAL AND REHABILITATION SERVICES RELATING TO ABUSE, NEGLECT, OR EXPLOITATION OF OLDER PERSONS; AND PROVIDING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 10] may be cited as the "Montana Elder Abuse Prevention Act".

Section 2. **Legislative findings and purpose.** The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, neglect, and exploitation of Montana's elderly through the identification and reporting of acts of such abuse, neglect, and exploitation.

Section 3. **Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person.

(2) "Exploitation" means the unethical use of an older person, his money, or his property to the advantage of another.

(3) "Long-term care facility" means a facility defined in 50-5-101(20).

(4) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(5) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's welfare to care for an older person by failing to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person.

(6) "Older person" means a person who is at least 60 years of age.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

Section 4. **Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

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(a) if the older person is not a resident of a long-term care facility, report the matter to:

(i) the department of social and rehabilitation services or its local affiliate;

(ii) the county attorney of the county in which the older person resides or in which the acts that are the subject of the report occurred;

(b) if the older person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of social and rehabilitation services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of social and rehabilitation services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless he acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; and

(g) a peace officer or other law enforcement official.

(4) Any other person may submit a report as provided in subsection (1).

Section 5. **Content of report.** (1) The report required by [section 4] may be made in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible.

(2) The report referred to under this section shall contain:

(a) the names and addresses of the older person and the person, if any, responsible for his care;

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(b) the name and address, if available, of the person who is alleged to have abused, neglected, or exploited the older person;

(c) to the extent known, the person's age and the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous injuries sustained by the older person; and

(d) the name and address of the person making the report.

Section 6. **Confidentiality.** (1) The case records of the department of social and rehabilitation services and its local affiliate, the county welfare department, the county attorney, and the court, concerning actions taken under [this act], and all reports made pursuant to [section 4] shall be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by [section 6(1)] may be disclosed upon request, to the following persons or entities in this or any other state:

(a) a physician who has in his care an older person who he reasonably believes was abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent; and

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of an offense constituting abuse, exploitation, or neglect and if the identity of the older person who is the subject of the report is not disclosed to the researcher.

(3) The records and reports required to be kept confidential by [section 6(1)] shall be disclosed upon request to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of [sections 1 through 10];

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, neglected, or exploited an older person is the holder of a license, permit, or certificate issued by the department of commerce or any other entity of state government under the provisions of Title 37, the report may be submitted to the entity that issued the license, permit, or certificate.

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Section 7. **Immunity from civil and criminal liability.** Any person who makes a report required or authorized to be made under [section 4] is immune from civil or criminal liability which might otherwise be incurred or imposed as a result of such a report unless the report is false in any material respect and the person acted in bad faith or with malicious purpose.

Section 8. **Admissibility of evidence.** In any proceeding resulting from a report made pursuant to the provisions of [sections 1 through 10] or in any proceeding where the report or its content is sought to be introduced into evidence, the report or its content or any other fact related to the report or to the condition of the older person who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

Section 9. **Duties of department of social and rehabilitation services.** (1) The department of social and rehabilitation services shall prepare an annual report of the information obtained pursuant to the reporting requirement of [this act].

(2) The department shall, when appropriate, provide protective services under Title 53, chapter 5, part 2, for an older person alleged to have been abused, neglected, or exploited.

Section 10. **Penalty.** Any person who purposely or knowingly fails to make a report required by [section 4] or discloses or fails to disclose the contents of a case record or report in violation of [section 6] is guilty of a misdemeanor and upon conviction is punishable as provided in 46-18-212.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 25, 1983.

CHAPTER NO. 624

AN ACT MAKING PERMANENT THE 1-CENT MOTOR FUELS TAX INCREMENT ENACTED IN 1979; RAISING THE MOTOR FUELS TAX RATES 6 CENTS PER GALLON EFFECTIVE JULY 1, 1983; INCREASING THE ALLOCATION TO COUNTIES, TOWNS, AND CITIES; AMENDING SECTIONS 15-70-101, 15-70-204, AND 15-70-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 632, Laws of 1979, imposed a tax of 1 cent per gallon of gasoline in addition to the tax of 8 cents per gallon imposed in section 15-70-204, MCA, and a tax of 1 cent per gallon of diesel fuel and volatile liquids in addition to the tax of 10 cents per gallon imposed in section 15-70-321, MCA; and

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WHEREAS, the tax increments of 1 cent per gallon enacted in Chapter 632, Laws of 1979, expire on July 1, 1983; and

WHEREAS, the Legislature intends to make permanent the increases of 1 cent per gallon enacted in Chapter 632, Laws of 1979, and to continue their imposition and collection after July 1, 1983, to raise funds for the department of highways in the earmarked special revenue fund; and

WHEREAS, the Legislature intends to increase the tax on gasoline by an additional 6 cents per gallon effective July 1, 1983, and to increase the tax on diesel fuel and volatile liquids by an additional 6 cents per gallon effective July 1, 1983.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-204, MCA, is amended to read:

"15-70-204. Gasoline license tax — rate. (1) Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department of commerce as provided by 67-1-301, as amended, and *15* cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported or sold for export out of the state shall not be included in the measure of the distributor's license tax.

(3) Gasohol shall be subject to gasoline license taxes in accordance with the following schedule:

(a) beginning April 1, 1979, gasohol shall be taxed at the rate of 2 cents per gallon;

(b) beginning April 1, 1985, gasohol shall be taxed at the rate of 4 cents per gallon;

(c) beginning April 1, 1987, gasohol shall be taxed at the rate of 6 cents per gallon.

(4) If at any time the gasoline license tax is lower than the current applicable tax on gasohol, the lower tax rate shall be adopted for gasohol."

Section 2. Section 15-70-321, MCA, is amended to read:

"15-70-321. Tax on diesel fuel and volatile liquids. The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to *17* cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state or used in motor vehicles, motorized equipment, and the internal combustion of any and all engines, including stationary engines, used in connection with any and all work performed under any and all

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contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipal, or other political subdivisions."

Section 3. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. All taxes, interest, and penalties collected under this chapter shall be turned over promptly to the state treasurer who shall place the same in the earmarked *special* revenue fund to the credit of the department of highways, except those funds hereinbelow allocated to cities, towns, and counties, which funds shall be paid by the state treasurer directly to such cities, towns, and counties.

(1) *$14,000,000* of the funds collected under this chapter shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (a) and (b) hereof:

(a) *$6,350,000* shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(b) *$7,650,000* shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities, and towns shall be used exclusively for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto.

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(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns shall inform the department of highways of the purposes for which the funds will be expended so that the county commissioners, the governing body, and the department of highways may coordinate the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(5) For the purposes of this section where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this section where determination of mileage is necessary for distribution of funds, it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways and state treasurer a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment.

(8) Funds authorized by this section shall be used for construction and maintenance programs only."

Section 4. **Effective date.** This act is effective on July 1, 1983.

Approved April 26, 1983.

CHAPTER NO. 625

AN ACT TO RESTRUCTURE THE MILL LEVIES FOR LOCAL GOVERNMENT MEDICAL FACILITIES; AMENDING SECTIONS 7-34-2134, 7-34-2417, 53-2-321, AND 53-2-322, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Levy of county taxes.** The board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax, not to exceed 10 mills on each dollar of taxable valuation of property, upon all property within the county for the erection, maintenance, and operation of county-owned or county-operated hospitals and nursing homes, or other hospital facilities created under 7-8-2102, 7-34-2201, 7-34-2301, and 7-34-2502. "Hospital facilities" as used in this section means a hospital or hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities,

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and infirmaries. The combined total number of mills levied under this section and for the county poor fund, under 53-2-321, may not exceed 18 mills. A higher levy may be made upon compliance with 7-6-2531 through 7-6-2537. If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district.

Section 2. Section 7-34-2134, MCA, is amended to read:

"7-34-2134. Special additional mill levy authorized. If the maximum levy of 3 mills on each dollar of taxable valuation of property within the hospital district is inadequate to raise the amount of money certified as necessary and proper by the board of hospital trustees as provided in 7-34-2132, the board of county commissioners may make an additional levy for 2 years upon the taxable property within said hospital district sufficient to raise the amount certified by the board of hospital trustees."

Section 3. Section 7-34-2417, MCA, is amended to read:

"7-34-2417. Special tax levy authorized. In the event the bonds become delinquent or cannot be paid from ordinary revenues of the facility, a county which has issued bonds under 7-34-2411 may levy taxes on all taxable property within the county in the manner provided for public hospital districts under 7-34-2133, 7-34-2134, 7-34-2135(1), and 7-34-2136, *up to a maximum of* 3 mills not submitted to a vote of the people and 3 additional mills approved by a vote of the people."

Section 4. Section 53-2-321, MCA, is amended to read:

"53-2-321. County authorized to care for indigent and levy taxes therefor. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law to provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this title, or the otherwise dependent poor of the county; and for said purposes to levy and collect annually a tax on property not exceeding 13 ½ mills, which levy shall be made at the time other tax levies are made on property, as provided by law."

Section 5. Section 53-2-322, MCA, is amended to read:

"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for public assistance purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(2) The amounts set up in the budget for the reimbursements to the department of social and rehabilitation services shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all such activities.

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(3) As soon as the preliminary budget provided for in 7-6-2315 has been agreed upon, a copy thereof shall without delay be mailed to the department of social and rehabilitation services, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(4) The department of social and rehabilitation services shall promptly examine the preliminary budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(5) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department of social and rehabilitation services without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(6) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, *except a county hospital or county nursing home*, may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services."

Section 6. **Effective date.** This act is effective July 1, 1983.

Approved April 26, 1983.

CHAPTER NO. 626

AN ACT TO AUTHORIZE INCREASED EMERGENCY EXPENDITURES BY THE GOVERNOR; AMENDING SECTION 10-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure in biennium. Whenever an emergency or disaster is declared by the governor, he is authorized to

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expend from the general fund not to exceed *$1,000,000* in any one biennium."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 26, 1983.

CHAPTER NO. 627

AN ACT TO PROVIDE FUNDS FOR NONGAME WILDLIFE PROGRAMS IN MONTANA; TO PROVIDE FOR CERTAIN RESTRICTIONS ON THE USE OF SUCH FUNDS; TO PROVIDE FOR FISH AND GAME COMMISSION APPROVAL OF THE USE OF SUCH FUNDS; AMENDING SECTION 87-5-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-5-102, MCA, is amended to read:

"**87-5-102. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means the nongame wildlife account established in [section 2].

(2) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(3) "Endangered species" means any species or subspecies of wildlife actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat;

(b) its overutilization for scientific, commercial, or sporting purposes;

(c) the effect on it of disease, pollution, or predation;

(d) other natural or man-made factors affecting its prospects of survival or recruitment within the state; or

(e) any combination of the foregoing factors.

(4) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including but not limited to research, census, law enforcement, habitat improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(5) "Nongame wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally

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classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this part.

(6) "Optimum carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(7) "Person" means any individual, firm, corporation, association, or partnership.

(8) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(9) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or any part, product, egg, or offspring or the dead body or parts thereof."

Section 2. **Nongame wildlife account.** (1) There is a nongame wildlife account in the earmarked revenue fund provided for in 17-2-102.

(2) All money collected under [section 3] must be deposited in the account, except as provided in subsection (6).

(3) Money in the account must be used by the department, upon the approval of the commission as determined under [section 4], to provide adequate funding for:

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, except that no money collected under [this act] may be used:

(a) for the purchase of any real property; or

(b) in such a way as to interfere with the production on or management of private property.

(5) Money derived from tax checkoff contributions to the account will replace license fee funding for nongame wildlife programs after June 30, 1985, and may not be used to replace money that would otherwise be appropriated for nongame wildlife programs.

(6) The department of revenue may deduct from collections an amount not to exceed $6,638 in fiscal year 1984 and $4,238 in fiscal year 1985 for administering the voluntary checkoff program. The department is authorized to spend the amounts and hire necessary personnel, and shall provide an itemized accounting to the 49th legislature of the cost of administering the checkoff program during fiscal years 1984 and 1985.

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Section 3. **Voluntary checkoff for nongame wildlife programs.** (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, and who is entitled to a refund may contribute to the funding of nongame wildlife programs in Montana by marking the appropriate box on the state income tax return.

(2) The department of revenue shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to nongame wildlife programs from the taxpayer's refunded amount. The provision shall be in substantially the following form:

Montana nongame wildlife funding. Check the appropriate blank if you wish to designate _____$2, _____$5, or _____$10 of your tax refund to fund nongame wildlife programs in Montana. If a joint return, check the appropriate blank if your spouse wishes to designate _____$2, _____$5, or _____$10 for the same purpose.

(3) Money received under this section must be deposited in the nongame wildlife account established by [section 2].

Section 4. **Duties of commission.** (1) The commission shall review and approve annually the nongame wildlife programs projects recommended by the department for funding from the nongame wildlife account. The commission shall provide for public comment during the review and approval process.

(2) The commission may adopt rules governing:

(a) the use of the nongame wildlife account set forth in [section 2]; and

(b) the review and approval process set forth in subsection (1).

Section 5. **Report.** The department shall report to the 50th legislature the results of any program using money from the nongame wildlife account and shall list in detail how the money collected was used.

Section 6. **Codification instruction.** (1) Sections 2 and 4 are intended to be codified as an integral part of Title 87, chapter 5, part 1, and the provisions of Title 87, chapter 5, part 1, apply to sections 2 and 4.

(2) Section 3 is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, apply to section 3.

Section 7. **Applicability — termination.** (1) This act applies to tax returns which by law are required to be filed after January 1, 1984.

(2) This act shall terminate December 31, 1987.

Approved April 26, 1983.

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CHAPTER NO. 628

AN ACT PROVIDING FOR STATEWIDE ACCESS TO HEALTH INFORMATION THROUGH A CENTRAL INFORMATION CENTER OPERATED BY A PRIVATE NONPROFIT CORPORATION UNDER CONTRACT WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; PROVIDING AN APPROPRIATION FOR A CENTRAL HEALTH INFORMATION CENTER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a central access point within the state is needed to provide consumer-oriented health information to lay persons and health professionals on physical and mental diseases, disorders, and concerns; and

WHEREAS, there are within the state of Montana many groups, organizations, and health care specialists available to comfort, diagnose, treat, or otherwise assist and inform persons regarding health problems, but because many of those persons and groups, both professional and lay, perform services that may not be publicly known, either locally or statewide; and

WHEREAS, health information is currently being gathered in each county and the collected data is a comprehensive compendium of available resources within a county; and

WHEREAS, there is a demonstrable need for this information to be available statewide, to be updated, and to be available to lay persons and health care professionals on a current basis.

THEREFORE, it is the intent of this act to develop a central health information center to assure statewide access to current health information.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Health information services.** (1) There is a health information center, administered under the provisions of subsection (3) by the department of health and environmental sciences.

(2) The health information center shall provide a central access point to provide updated consumer-oriented information to lay persons and health care professionals regarding:

(a) health problems of lay individuals in areas of specific diseases, disorders, and health choices;

(b) assistance in accessing the existing health care delivery system;

(c) health support groups, such as lay groups who organize to address widespread or unique health problems such as cancer or kidney disorders by providing patient counseling; and

(d) other health service issues and problems.

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(3) The health information center must be operated by a private nonprofit corporation under contract to the department of health and environmental sciences.

Section 2. **Appropriation.** There is appropriated from the general fund $94,800 to the department of health and environmental sciences for one year, for the implementation of this act.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 26, 1983.

CHAPTER NO. 629

AN ACT TO INCREASE THE MAXIMUM GENERAL FUND BUDGET SCHEDULES FOR ELEMENTARY SCHOOLS AND HIGH SCHOOLS; AMENDING SECTIONS 20-9-316 THROUGH 20-9-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-316, MCA, is amended to read:

"20-9-316. Elementary school maximum budget schedule for 1983-84. (1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be *$18,627* if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$18,627* plus *$778.50* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be *$25,634* plus *$778.50* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$40,926* plus *$487.50* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$1,809* shall be decreased at the rate of *$1.76* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of *$1,703* shall be decreased at the rate of *$1.61* for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$1,382* for each pupil.

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(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 2. Section 20-9-317, MCA, is amended to read:

"20-9-317. High school maximum budget schedule for 1983-84. (1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$106,155*.

(2) For a secondary school having an ANB of more than 24 pupils, the maximum *$4,423* shall be decreased at the rate of *$24.12* for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$4,037* shall be decreased at the rate of *$24.12* for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of *$2,590* shall be decreased at the rate of *$4.04* for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of *$2,186* shall be decreased by *$2.22* for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$1,964* shall be decreased at the rate of *41* cents until the ANB shall have reached 600 pupils.

(7) For a school having an ANB over 600 pupils, the maximum shall not exceed *$1,842* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

Section 3. Section 20-9-318, MCA, is amended to read:

"20-9-318. Elementary school maximum budget schedule for 1984-85 and succeeding years. *For 1984-85 and succeeding school years, the elementary school maximum budget schedule is as follows:*

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be *$19,186* if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$19,186* plus *$801.80* per pupil on the basis of the average number belonging over nine.

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(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be *$26,403* plus *$801.80* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$42,154* plus *$502.10* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$1,863* shall be decreased at the rate of *$1.81* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of *$1,754* shall be decreased at the rate of *$1.65* for each additional pupil until the ANB shall have reached 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$1,424* for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule."

Section 4. Section 20-9-319, MCA, is amended to read:

"20-9-319. High school maximum budget schedule for 1984-85 and succeeding years. *For 1984-85 and succeeding school years, the high school maximum budget schedule is as follows:*

(1) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$109,340.*

(2) For a secondary school having an ANB of more than 24 pupils, the maximum *$4,556* shall be decreased at the rate of *$24.85* for each additional pupil until the ANB shall have reached a total of 40 such pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$4,158* shall be decreased at the rate of *$24.85* for each additional pupil until the ANB shall have reached 100 pupils.

(4) For a school having an ANB of more than 100 pupils, a maximum of *$2,667* shall be decreased at the rate of *$4.16* for each additional pupil until the ANB shall have reached 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of *$2,252* shall be decreased by *$2.28* for each additional pupil until the ANB shall have reached 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$2,023* shall be decreased at the rate of *42* cents until the ANB shall have reached 600 pupils.

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(7) For a school having an ANB over 600 pupils, the maximum shall not exceed *$1,897* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, shall be treated as one school for the purpose of this schedule."

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 26, 1983.

CHAPTER NO. 630

AN ACT TO ALLOW THE MONTANA WHEAT RESEARCH AND MARKETING COMMITTEE TO AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ENTER INTO INSURANCE CONTRACTS TO PROVIDE PARTIAL REIMBURSEMENT TO A GRAIN PRODUCER WHO SUFFERS A LOSS BECAUSE OF A GRAIN DEALER'S BANKRUPTCY OR A GRAIN DEALER'S WRONGFUL DISPOSITION OF GRAIN DELIVERED TO HIM; AMENDING SECTIONS 80-11-201 AND 80-11-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-201, MCA, is amended to read:

"80-11-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Commercial channels" means the sale of wheat or barley for any use when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley.

(2) "Committee" means the Montana wheat research and marketing committee provided for in 2-15-3002.

(3) "First purchaser" means any person, public or private corporation, association, or partnership buying, accepting for shipment, or otherwise acquiring the property in or to wheat or barley from a grower and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such wheat or barley is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.

(4) "Grain" means wheat or barley.

(5) "Grain dealer" means any person, association, dealer, partnership, or corporation or its agent or representative who is licensed by the state

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or federal government and engaged in the business of buying, receiving, selling, exchanging, warehousing, or negotiating for the sale of grain. The term also includes anyone who solicits the sale, resale, exchange, or transfer of any grain purchased from a grower; receives grain on consignment from a grower; or receives grain to be handled on a net return basis from the grower.

(6) "Grower" means any landowner personally engaged in growing wheat or barley, a tenant of the landowner personally engaged in growing wheat or barley, or both the owner and the tenant jointly; and includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and any and all other business units, devices, and arrangements.

(7) "Loss" means any monetary loss to a grower resulting from the delivery of grain to a grain dealer due to an extraordinary cause, including but not limited to bankruptcy, embezzlement, theft, or fraudulent disposition by the grain dealer.

(8) "Sale" includes any pledge or mortgage of wheat or barley after harvest to any person, public or private.

(9) "Warehousing" means any method by which grain owned by another is held for him by one who is not the direct owner of the grain. The term does not include transportation of grain for another."

Section 2. Section 80-11-205, MCA, is amended to read:

"80-11-205. Powers of the committee. (1) The committee may:

(a) adopt rules necessary for the administration of this part;

(b) provide, through the department, for the enforcement of this part;

(c) provide for the conduct of research into the production, marketing, and uses of wheat and barley;

(d) enter into contracts or agreements with Montana state university and other local, state, or national organizations, public or private, for the purposes of improving wheat or barley quality, increasing the efficiency of production, developing marketing knowledge, developing markets, determining new uses for wheat or barley, developing alternative crops for wheat or barley, and carrying out all research and marketing contemplated by this part. The committee may not establish research units or agencies of its own.

(e) authorize the department to enter into insurance contracts and pay premiums therefor from the wheat research and marketing account for the purpose of providing insurance coverage to growers who, after the contract has been entered into, suffer a loss as defined in [section 1].

(2) No researchers or professional or scientific personnel may be employed to carry out this part except as provided in subsection (1)(d) of this section.

(3) None of the powers or duties provided for in this part permit participation in state or federal political action by the committee."

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Section 3. **Insurance contracts — administration — purpose.** The department shall, through rules it adopts, administer the purchase of insurance contracts authorized under 80-11-205(1)(e) and administer the dispersal of money received for losses covered by the insurance contracts. The insurance contracts shall be purchased for the benefit of growers who have delivered grain to grain dealers. It is the goal of the legislature that the insurance contracts, within available resources, compensate growers for up to 80% of losses to their grain while it is in the control of a grain dealer.

Section 4. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 80, chapter 11, part 2, and the provisions of Title 80. chapter 11, part 2, apply to section 3.

Section 5. **Effective date.** This act is effective on passage and approval.

Section 6. **Termination date.** This act terminates July 1, 1985.

Approved April 26, 1983.

CHAPTER NO. 631

AN ACT ALLOWING THE PAYMENT OF FEES IN CONNECTION WITH THE SALE OF COUNTY GENERAL OBLIGATION, MUNICIPAL GENERAL OBLIGATION, AND SCHOOL DISTRICT BONDS; REDEFINING THE TERM "SERIAL BONDS" AS IT RELATES TO SUCH GENERAL OBLIGATION BONDS; AND ALLOWING FLEXIBILITY AS TO THE FIRST INTEREST PAYMENT DATE ON ALL SUCH BONDS; AMENDING SECTIONS 7-7-2211, 7-7-2251, 7-7-2254, 7-7-4210, 7-7-4251, 7-7-4254, 20-9-408, 20-9-430, AND 20-9-432, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2211, MCA, is amended to read:

"**7-7-2211. Serial bonds.** The term "serial bonds", as used in this part, is hereby defined as being a bond issue payable in annual installments, one installment consisting of one or more bonds, becoming due and payable each year; *however,* the *principal* amount of bonds *maturing in each installment may not be more than three times the principal amount of the bonds maturing in the immediately preceding installment.*"

Section 2. Section 7-7-2251, MCA, is amended to read:

"**7-7-2251. (Revived July 1, 1983) Form of notice of sale of bonds.** The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of .... County, state of Montana, that the board will on the .... day of ...., 19..,

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at the hour of ....m., at the office of the board in the courthouse in the (town or city) of .... in the said county, sell to the highest and best bidder for cash, either amortization or serial bonds of the said county in the *principal* amount of .... dollars ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the said board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the board may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each *and* will become payable *according to the maturity schedule set forth below (set forth maturity schedule adopted by the board of county commissioners).*

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding 6% per annum *commencing on the .... day of .... (month), 19.., and* payable semiannually on the .... day of .... (month) and .... (month) in each year *thereafter* and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars, ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that he shall fail or refuse to complete the purchase of the bonds in accordance with the terms of his bid.

All bids should be addressed to the board of county commissioners of said county and delivered to the county clerk of said county.

ATTEST:

.....
(Chairman, Board of County Commissioners)
of .....County
State of Montana

.....
(Clerk of the Board of County Commissioners) of
County, Montana
Address ....., Montana"

Section 3. Section 7-7-2254, MCA, is amended to read:

"7-7-2254. Procedure for sale of bonds. (1) The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds.

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(2) The bonds shall be sold at not less than par *with* accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the board shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the county. The board shall accept the bid which they shall judge most advantageous to the county. The board is authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the county; provided, however, that such bonds shall not be sold at less than par *with* accrued interest to date of delivery.

(3) *Consultants' fees and* attorneys' fees *may* be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale thereof."

Section 4. Section 7-7-4210, MCA, is amended to read:

"7-7-4210. Serial bonds. The term "serial bonds", as used in this part, is hereby defined as being a bond issue payable in annual installments, one installment consisting of one or more bonds, becoming due and payable each year*; however,* the *principal* amount of bonds *maturing in each installment may not be more than three times the principal amount of the bonds maturing in the immediately preceding installment.*"

Section 5. Section 7-7-4251, MCA, is amended to read:

"7-7-4251. (Revived July 1, 1983) Form of notice of sale of bonds. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of ...., Montana, that the council will, on the .... day of ...., 19.., at the hour of ... ...m., at its council chamber in the (city or town) of ...., Montana, sell to the highest and best bidder for cash either amortization or serial bonds of the said (city or town) in the total amount of .... dollars, ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the council.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds as the council may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each *and* will become due and payable *according to the maturity schedule set forth below (set forth maturity schedule adopted by the city or town council).*

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The bonds, whether amortization or serial bonds, will bear date of ...., 19.., will bear interest at a rate not exceeding 6% per annum *commencing on the .... day of .... (month), 19.., and* payable semiannually on the .... day of .... and on the .... day of .... in each year *thereafter* and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

Said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The council reserves the right to reject any and all bids and to sell said bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars ($....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event he shall fail or refuse to complete the purchase of said bonds in accordance with the terms of his bid.

All bids shall be addressed to the council of the (city or town) of .... and delivered to the clerk of said (city or town).

.....
Mayor of the (city or town) of
....., Montana

ATTEST:

.....
(City or Town) Clerk"

Section 6. Section 7-7-4254, MCA, is amended to read:

"7-7-4254. Procedure for sale of bonds. (1) The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds shall be sold at not less than par *with* accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town. The council shall accept the bid it considers most advantageous to the city or town. The council may reject any and all bids and sell the bonds at private sale if this is considered to be in the best interests of the city or town; provided, however, that the bonds may not be sold at less than par *with* accrued interest to date of delivery.

(3) *Consultants' fees and* attorneys' fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale thereof."

Section 7. Section 20-9-408, MCA, is amended to read:

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"20-9-408. Definition of forms of bonds. As used in this title, unless the context clearly indicates otherwise:

(1) "amortization bonds" means the form of bonds on which a part of the principal must be paid each time interest becomes payable. The part payment of principal increases at each installment in the same amount that the interest decreases. The combined interest and principal due on each due date remains the same until the bonds are paid. The final payment may vary from prior payments in the amount resulting from disregarding fractional cents in prior payments.

(2) "serial bonds" means the form of bonds which are payable in annual installments and on which the amount *maturing* each year *may not be more than three times the principal* amount of the bonds *maturing in the immediately preceding year.*"

Section 8. Section 20-9-430, MCA, is amended to read:

"20-9-430. (Revived July 1, 1983) Notice of sale of school district bonds. The trustees shall cause the notice of the sale of the bonds to be given. The notice shall state the purpose for which the bonds are to be issued and the amount proposed to be issued and shall be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. .... of .... County, state of Montana, that the trustees will on the .... day of...., 19.., at the hour of .... o'clock ....m. at ...., in the school district, sell to the highest and best bidder for cash either amortization or serial bonds of the school district in the total amount of .... dollars ($....), for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each *and* will become payable *according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district).*

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding 7% per annum *commencing on the .... day of .... (month), 19.., and* payable semiannually on the .... day of .... (month) and .... (month) in each year *thereafter* and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which

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they will purchase the bonds at par. The bonds shall be sold in open competition bidding, by written bids, or by sealed bids. The trustees reserve the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be accompanied by money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana, in the sum of .... dollars ($....) payable to the order of the district, which will be forfeited by the successful bidder in the event that he shall refuse to purchase the bonds.

All bids should be addressed to the undersigned district.

.....
Chairman, School District No.... of
.....County
Address: .....

ATTEST:

Subscribed and sworn to before me this .... day of ....., 19...; ..... Notary Public for the State Residing at ...., Montana. My Commission expires ....."

Section 9. Section 20-9-432, MCA, is amended to read:

"20-9-432. Sale of school district bonds. (1) The trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds shall be sold at not less than par *with* accrued interest *to date of delivery*, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind but also every other known element affecting the total cost of the bonds to the district when paid in full. The trustees shall accept the bid which they shall judge most advantageous to the school district. *Consultants' fees and* attorney fees *may* be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds or in negotiating the sale. The trustees are authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the school district, except that such bonds shall not be sold at less than par *with* accrued interest *to date of delivery*.

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating for sale of bond issues if, in the opinion of the trustees, such cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. Provided, however, that bond issues prepared or negotiated for sale under this section shall not be

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combined for any other purpose but shall be entered separately on the books of the county treasurer and shall be otherwise treated as separate bond issues."

Approved April 26, 1983.

CHAPTER NO. 632

AN ACT TO ESTABLISH A NEW CLASS OF PROPERTY FOR TAXATION PURPOSES TO INCLUDE TRAILERS AND MOBILE HOMES, REGARDLESS OF SIZE, USED AS RESIDENCES; TO CLARIFY WHEN TRAILERS AND MOBILE HOMES MAY BE TAXED AS PERSONAL PROPERTY; TO PROVIDE FOR INITIAL ASSESSMENT AND TAXATION; AND DEFINING "LEASEHOLD IMPROVEMENTS"; AMENDING SECTIONS 15-1-101, 15-6-134, AND 15-6-151, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) When terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(e) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. *A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.*

(f) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202.

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Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(g) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 32 feet in length, designed to be moved from one place to another by an independent power connected to them.

(h) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(i) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(j) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(k) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and 15-23-801; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(l) The term "taxable value" means the percentage of market or assessed value as provided for in 15-6-131 through 15-6-140.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 2. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements except those specifically included in another class;

(c) the first $35,000 or less of the market value of any improvement on real property and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of:

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(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources including otherwise tax-exempt income of all types is not more than $8,000 for a single person or $10,000 for a married couple.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) through (1)(c) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(d) is taxed at 8.55% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple	Percentage Multiplier
$0 - $1,000	$0 - $1,000	0%
1,001 - 2,000	1,001 - 2,000	10%
2,001 - 2,800	2,001 - 3,000	20%
2,801 - 3,600	3,001 - 4,000	30%
3,601 - 4,400	4,001 - 5,000	40%
4,401 - 5,200	5,001 - 6,000	50%
5,201 - 6,000	6,001 - 7,000	60%
6,001 - 6,800	7,001 - 8,000	70%
6,801 - 7,600	8,001 - 9,000	80%
7,601 - 8,000	9,001 - 10,000	90%"

Section 3. Section 15-6-151, MCA, is amended to read:

"15-6-151. Application for certain class four classifications. (1) A person applying for classification of property described in subsection (1)*(c)* of 15-6-134 shall make an affidavit to the department of revenue, on a form provided by the department without cost, stating:

(a) his income;

(b) his retirement benefits;

(c) his marital status;

(d) the fact that he maintains the land and improvements as his primary residential dwelling, where applicable; and

(e) such other information as is relevant to the applicant's eligibility.

(2) This application must be made before March 1 of the year after the applicant becomes eligible. The application remains in effect in subsequent years unless there is a change in the applicant's eligibility. The taxpayer shall inform the department of any change in eligibility. The department may inquire by mail whether any change in eligibility has taken place and may require a new statement of eligibility at any time it considers necessary.

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(3) The affidavit is sufficient if the applicant signs a statement affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing."

Section 4. **Class twelve property — description — taxable percentage.** (1) Class twelve property includes:

(a) a trailer or mobile home used as a residence except when:

(i) held by a distributor or dealer of trailers or mobile homes as his stock in trade; or

(ii) specifically included in another class;

(b) the first $35,000 or less of the market value of a trailer or mobile home used as a residence and actually occupied for at least 10 months a year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources including otherwise tax-exempt income of all types is not more than $8,000 for a single person or $10,000 for a married couple.

(2) Class twelve property is taxed as follows:

(a) Property described in subsection (1)(a) that is not of the type described in subsection (1)(b) is taxed at 8.55% of its market value.

(b) Property described in subsection (1)(b) is taxed at 8.55% of its market value multiplied by a percentage figure based on income and determined from the table established in subsection (2)(b) of 15-6-134.

Section 5. **Initial assessment of class twelve property — when.** The county assessor shall assess all class twelve property immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana.

Approved April 26, 1983.

CHAPTER NO. 633

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE REGULATION OF THE SALE AND USE OF PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-109, 80-8-201, 80-8-203, 80-8-204, 80-8-207, 80-8-209, 80-8-213, AND 80-8-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-105, MCA, is amended to read:

"80-8-105. Rules. (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide,

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Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, *suspension or cancellation of registration,* application, use or restricting use, prohibiting use, offering or exposing for sale *of* any pesticide;

(b) determining whether pesticides are highly toxic to man;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which shall be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed $5 per type of device, specifying classes of devices to be registered and providing for additional requirements;

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(o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including requalification training;

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306; and

(q) establishing fees for training courses and materials.

(3) (a) Whenever the department finds that those rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, *suspension or cancellation of registration*, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and shall encompass all reasonable factors which the department considers necessary to prevent damage or injury to:

(i) persons, animals, *crops*, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the *Montana* Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 shall be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department shall be in writing, shall be entered in full in books to be kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department shall include and be based upon written findings of fact. A copy of any rule or order certified by the department shall be received in evidence in all courts of this state with the same effect as the original."

Section 2. Section 80-8-109, MCA, is amended to read:

"80-8-109. Educational programs. *(1)* The department shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides

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as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of the state or a unit of the Montana university system.

(3) All fees collected in any fiscal year and not expended within that fiscal year must be placed in an educational and manuals account of the earmarked revenue fund for future use for that purpose."

Section 3. Section 80-8-201, MCA, is amended to read:

"**80-8-201. Registration.** (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered with the department. The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all *federally* approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement including:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(3) Any pesticide imported into this state which is subject to the provisions of any federal act providing for the registration of pesticides and has been registered under the provisions of a federal act shall be registered in the state. However, the state may restrict the *sale or* use and application of the pesticide by type of *dealer*, applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration information required by the department must be provided.

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(4) The applicant shall pay an annual fee of *$50* for each pesticide registered. A registration fee is not required to register *a federally approved* experimental use permit. Fees collected shall be deposited in the state treasury to the credit of the general fund.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the article warrants the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of 80-8-202, it shall register the article.

(6) If it does not appear to the department that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fails to comply with the chapter so as to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this chapter *or whenever scientific evidence proves that the article endangers man or the general environment afforded protection under 80-8-105(3)(a)*. When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may *pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.*

(7) Registration is not required in the case of a pesticide shipped from one plant in this state to another plant in this state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. *The applicant shall pay a one-time fee of $50 for a special local need or experimental-use permit registration.* The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder. The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish, wildlife, and parks are in agreement with the proposed registration, the department of agriculture shall issue the registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department of agriculture shall issue the registration.

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(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the departments and implemented by the department of agriculture.

(9) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. If the federal cancellation allows existing stock to be used past the final date of cancellation, such sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of such products to insure their proper disposal, relabeling, or removal."

Section 4. Section 80-8-203, MCA, is amended to read:

"80-8-203. Commercial applicator. (1) It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of *$35*. Applicators applying for a dealer's license under this chapter shall be required to pay only a *$20* licensing fee for the dealer's license. The provisions of this *subsection* shall not apply to any person employed only to operate any equipment used for the application of any pesticide and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided for under 80-8-205.

(3) Veterinarians licensed as provided in Title 37, chapter 18, part 3, shall not be required to be licensed to apply nonrestricted pesticides, provided that these veterinarians shall register with the department each year; provided further that the veterinarians shall be required to meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules."

Section 5. Section 80-8-204, MCA, is amended to read:

"80-8-204. Application for applicator's license. (1) Application for a pesticide applicator's license provided for in 80-8-203 shall be made annually to the department before applying pesticides in any calendar

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year, provided that pesticide applicators applying for renewal of license shall do so on or before *March* 1 of that calendar year. Any applicator applying for renewal of license after *March* 1 shall be assessed a *$25* late licensing fee.

(2) An individual applying for a license to engage in aerial application of pesticides shall certify on the application that he has met all the federal aviation administration and the department of commerce requirements for aerial pesticide applicators."

Section 6. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for any person to sell, offer for sale, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state.

(2) The application for a license shall be accompanied by a fee of *$35*. Dealers applying for renewal of license shall do so on or before *March* 1 of that calendar year. Any dealer applying for renewal of license after *March* 1 shall be assessed a *$25* late licensing fee.

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit his license or permit issued under authority of this chapter before completing a sale.

(4) Dealers may make one application for two annual licenses if the application is accompanied by a *$35* licensing fee for each year of the state biennium.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

Section 7. Section 80-8-209, MCA, is amended to read:

"80-8-209. Farm applicators. (1) Farm applicators shall obtain a special-use permit prior to purchasing and using any pesticide designated by the department as a restricted-use pesticide. *The fee for the permit is $15.* The special-use permit shall be effective for 5 calendar years. The department may establish a staggered years system of issuing permits.

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(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any agricultural commodity on property owned, leased, or rented by such applicator.

(3) Farm applicators shall qualify for *their first* permit by either passing a graded written examination or attending a training course approved by the department and taking an ungraded written examination. The examinations and course shall require and demonstrate practical knowledge of the applicator's ability to:

(a) recognize common pests to be controlled and damage caused by them;

(b) read and understand the label and labeling information, including the common name of the pesticide(s) applied, pest(s) to be controlled, timing and methods of application, safety precautions, any preharvest or reentry restrictions, and any specific disposal procedures;

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticides to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination; and

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) *The department shall require farm applicators to requalify for renewal of the 5-year permit by obtaining 100 training credits. The department shall establish by rule a uniform system of administering the requalification training credits. The department may credit only training related to the standards set forth in subsection (3).*

(6) Provisions of this chapter relating to certification of farm applicators do not apply to any farm applicator applying nonrestricted pesticides on his own land or on lands of his neighbors if he:

(a) operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide applicator;

(c) operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors."

Section 8. Section 80-8-213, MCA, is amended to read:

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"**80-8-213. Government agencies.** *(1)* All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this chapter and rules adopted thereunder concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies shall be subject to the provisions of 80-8-203 through 80-8-208.

(2) The department shall issue a limited commercial applicator's or dealer's license *for an annual fee of $50,* which shall be valid only when such *applicator or dealer is* applying or selling pesticides for such agencies, provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) A governmental agency shall pay the annual applicator's fee for its first four employee applicators. The agency shall pay an annual fee of $5 for each additional employee applicator.

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing such courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee."

Section 9. Section 80-8-306, MCA, is amended to read:

"**80-8-306. Penalties.** (1) Any person convicted of violating any of the provisions of this chapter or the rules issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department or its duly authorized agent in performance of its duty in connection with the provisions of this chapter shall be adjudged guilty of a misdemeanor and shall be fined not less than $100 but not more than *$1,500.*

(2) The department or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the chapter notwithstanding the existence of other remedies of law. When a person makes pesticide applications in more than one county on a commercial basis without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of any other county wherein a violation has occurred or is about to occur, and the department may select and proceed in the court most appropriate under the circumstances. The injunction is to be issued without bond.

(3) Nothing in this chapter is to be construed as requiring the department or its authorized agent to report minor violations of the chapter for prosecution or for the institution of seizure proceedings when it believes

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the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order; nor is any part of this chapter to be construed to apply to common carriers transporting shipments tendered to them by the general public.

(4) Any person who with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than $500 or imprisoned for not more than 1 year, or both.

(5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation of this chapter as defined in subsection (5)(d) may be assessed a civil penalty by the department of not more than $1,000 for each offense. However, farm applicators possessing a permit may not be assessed a civil penalty over $200 for the first offense. Assessment of a civil penalty may be made in conjunction with any other department warning, order, or administrative action authorized by this chapter.

(b) No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Montana Administrative Procedure Act.

(c) In determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation which occurred, the degree of care exercised by the offender, and whether significant harm resulted to health, environment, agricultural crops, or livestock.

(d) A major violation of this chapter includes:

(i) misuse of a pesticide which results in proven harm to human health, the environment, or agricultural crops or livestock;

(ii) selling of a restricted pesticide to a person not certified or authorized to purchase such pesticides;

(iii) use or sale of unregistered pesticides;

(iv) failure to maintain any individual pesticide application and sales records;

(v) using or selling pesticides without having obtained the required license or permit; or

(vi) reoccurrence of any identical violation of this chapter within the same calendar year.

(e) If the department is unable to collect such civil penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(6) Any person against whom the department has assessed a civil penalty under this section may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have

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occurred. Appeal is by trial de novo, and a jury trial must be granted if requested. Where the provisions of this subsection conflict with 2-4-702 through 2-4-704, the provisions of this subsection govern."

Section 10. **Deposit of fees and penalties in general fund.** All licensing, permit, registration, and equipment inspection fees collected under part 2 of this chapter and any civil penalties collected under 80-8-306 must be deposited in the general fund.

Section 11. **Codification instruction.** Section 10 is intended to be codified as an integral part of Title 80, chapter 8.

Section 12. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 13. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 26, 1983.

CHAPTER NO. 634

AN ACT TO EXEMPT CERTAIN TIPS FROM MONTANA INCOME TAX LIABILITY AND WITHHOLDING TAX; AMENDING SECTIONS 15-30-111 AND 15-30-201, MCA; AND PROVIDING A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

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(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits received under the Federal Employees' Retirement Act not in excess of $3,600;

(d) all benefits, not in excess of $360, received as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(e) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(f) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(g) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(h) all Montana income tax refunds or credits thereof;

(i) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(j) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9;

(k) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(l) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective."

Section 2. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

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(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for such service, the term "employer" means the person having control of the payment of such wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include remuneration paid:

(a) for active service as a member of the armed forces of the United States;

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, a local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business;

(ii) such individual was regularly employed (as determined under subsection (4)(d)(i)) by such employer in the performance of such service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including

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delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when such payments are in the form of lodgings or meals and such services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

(j) as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging."

Section 3. **Contingent termination date.** This act terminates if congress passes and the president approves legislation that removes the provision in section 6053(c)(3) of the Internal Revenue Code of 1954 that requires an employee allocation for tax purposes of 8% of gross receipts of the business for which the employee works. If this act terminates, it does so on the date of the final approval of the congressional legislation.

Approved April 26, 1983.

CHAPTER NO. 635

AN ACT TO EXEMPT CERTAIN TAXABLE VALUATION OF LARGE-SCALE HARD-ROCK MINERAL DEVELOPMENT FROM THE USUAL PROPERTY TAXATION BY COUNTIES AND SCHOOL DISTRICTS AND TO REALLOCATE THAT TAXABLE VALUATION FOR TAXATION BY THOSE MUNICIPALITIES, COUNTIES, AND SCHOOL DISTRICTS TO WHICH THE TAXABLE VALUATION IS ALLOCATED; TO SHARE THE PROPERTY TAX BASE OF LARGE-SCALE HARD-ROCK MINERAL DEVELOPMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Declaration of necessity and purpose.** The commencement of new large-scale hard-rock mineral developments often results in revenue disparities among adjacent local government units. This occurs

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primarily when a mine that locates in one taxing jurisdiction causes population influxes in neighboring jurisdictions. The result can be that some jurisdictions will experience a need to increase expenditures and receive no corresponding increase in revenue, while others will experience an increase in revenue and receive no comparable increase in expenditures. There is therefore a need to allocate the increase in property tax base resulting from the development and operation of new large-scale mines so that property tax revenues will be equitably distributed among affected local government units.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Affected local government unit" means a local government unit that will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an impact plan adopted pursuant to 90-6-307.

(2) "Board" means the hard-rock mining impact board established in 2-15-1822.

(3) "Mineral development employee" means a person who resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(4) "Mineral development student" means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(5) "Jurisdictional revenue disparity" means property tax revenues resulting from a large-scale hard-rock mineral development that are inequitably distributed among affected local government units as finally determined by the board in an approved impact plan.

(6) (a) "Large-scale mineral development" for the purposes of this act is defined in 90-6-302.

(7) "Local government unit" for the purposes of this part means a county, municipality, or school district.

(8) "Taxable valuation" of a mineral development means the total of the gross proceeds taxable percentage specified in 15-6-132(2)(a) when added to the taxable percentages of real property, improvements, machinery, equipment, and other property classified under Title 15, chapter 6, part 1.

Section 3. **Jurisdictional revenue disparity — conditioned exemption and reallocation of certain taxable valuation.** (1) When an impact plan for a large-scale mineral development approved by the board pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the board shall promptly notify the developer, all affected local government units, and the department of revenue of the disparity. Except as provided in this section and [section 4], the increase in taxable valuation of

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the mineral development that occurs after the issuance and validation of a permit under 82-4-335 is not subject to the usual application of county and school district property tax mill levies. This increase in taxable valuation must be allocated to local government units as provided in [section 4]. The increase in taxable valuation allocated as provided in [section 4] is subject to the application of property tax mill levies in the local government unit to which it is allocated.

(2) The total taxable valuation of a large-scale mineral development remains subject to the statewide mill levies and basic county levies for elementary and high school foundation programs as provided in 20-9-331 and 20-9-333.

(3) The provisions of subsection (1) remain in effect until the large-scale mineral development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the board.

Section 4. **Allocation of taxable valuation for local taxation purposes.** When property of a large-scale mineral development is subject to the provisions of [section 3], the increase in taxable valuation must be allocated by the department of revenue as follows:

(1) The total increase in taxable valuation of the mineral development must be allocated between affected counties and affected municipalities according to the following formula based on the place of residence of mineral development employees:

(a) A portion, not to exceed 20%, to affected municipalities, based on that percentage of the total number of mineral development employees that reside within municipal boundaries. The taxable valuation allocated to affected municipalities must be distributed to each municipality according to its percentage of the total number of mineral development employees who reside within municipal boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is subject to the same county mill levy as other taxable properties located in the municipality.

(b) The remaining portion of the taxable valuation must be distributed to each affected county according to its percentage of the total number of mineral development employees that reside within the county.

(2) The total increase in taxable valuation must be distributed pro rata among each affected high school district according to the percentage of the total number of mineral development high school students that reside within each district.

(3) The total increase in taxable valuation must be distributed pro rata among each affected elementary school district according to the percentage of the total number of mineral development elementary school students that reside within each district.

Section 5. **Employee surveys.** Each large-scale mineral development subject to the provisions of [sections 3 and 4] shall, on or before May 1 of each year, conduct a survey of its employees and promptly submit a report of its findings to the department of revenue. The report must include:

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(1) the number of mineral development employees residing within each affected county;

(2) the number of mineral development employees residing within each affected municipality;

(3) the number of mineral development students residing in each affected high school district; and

(4) the number of mineral development students residing in each affected elementary school district.

(5) The initial allocation of the increase in taxable valuation made as provided in [section 3] and [section 4] shall be made on the basis of the place of residence of employees and the district of enrollment of students as projected in the approved impact plan for that period of time between the issuance and validation of the permit and the submission of an employee survey as provided for in this section.

Section 6. **Effective date.** This act is effective on passage and approval.

Section 7. **Codification instruction.** This act is intended to be codified as Title 90, chapter 6, part 4, hard-rock mining impact property tax base sharing.

Approved April 26, 1983.

CHAPTER NO. 636

AN ACT CHANGING THE CRITERIA FOR TRANSFER OF AN ALL-BEVERAGES LIQUOR LICENSE TO A NEW LOCATION AND OWNERSHIP OUTSIDE ITS ORIGINAL QUOTA AREA BY INCREASING THE PERCENTAGE BY WHICH THE NUMBER OF SUCH LICENSES IN THE NEW QUOTA AREA MAY EXCEED THAT AREA'S QUOTA; AMENDING SECTION 16-4-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-204, MCA, is amended to read:

"16-4-204. Contents of license — posting — privilege — catering endorsement — transfer — expiration. (1) Every license issued under this part shall set forth the name of the person to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized

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under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

(3) A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license, and in such event the license may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(4) In the event of a major loss or damage to licensed premises by unforeseen natural causes or in case of expiration of lease of the licensed premises or in the event of eviction or increase of rent by the landlord (in case of rented licensed premises) or in case of proposed removal of license to premises as substantially suited for the retail liquor business as the premises vacated, the licensee may apply to the department for a transfer of the license to different premises. The department may in its discretion permit a transfer in such cases if it appears to the department that such a transfer is required to do justice to the licensee applying for the transfer. The department shall in no event nor for any cause permit a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(5) Upon a bona fide sale of the business operated under any license, the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the department, and any licensee or transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval, providing the application for transfer has been filed with the department.

(6) (a) Except as provided in subsection (6)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

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(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (6)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee. A license transferred between quota areas under this section may be held only by natural persons for 5 years following the transfer. For the purpose of this section, natural persons shall not include limited partnerships or other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business authorized by the license.

(d) Once a license is transferred to a new quota area under subsection (6)(a), it may not be transferred to another quota area or back to the original quota area.

(7) (a) Any all-beverage licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to his all-beverage license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages, such beverages to be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $40 must be filed with the department at least 10 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held. An all-beverage licensee who holds an endorsement granted under this subsection (7) may not receive approval to cater an event of which he is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.

(d) The licensee shall file with each application for an event to be catered a written statement of approval of the premises where the event

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is to be held issued by the department of health and environmental sciences.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(8) Except as above provided, no license shall be transferred or sold nor shall it be used for any place of business not described in the license; provided, however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license.

(9) All licenses shall expire at midnight of June 30 of each year."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 26, 1983.

CHAPTER NO. 637

AN ACT TO REQUIRE THE PUBLICATION OF A STATEMENT, WITH EVERY RULE PROPOSED AND ADOPTED UNDER IMPLIED RULEMAKING AUTHORITY, THAT THE RULE IS ADVISORY ONLY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statement of implied authority and legal effect of rule.** (1) Each adjective or interpretive rule or portion of such a rule to be adopted after the effective date of this act under implied rulemaking authority shall contain a statement in the historical notations of the rule that the rule is advisory only but may be a correct interpretation of the law. Such statement must be placed in the ARM when the rule in question is next scheduled for reprinting.

(2) The administrative code committee may file with the secretary of state, for publication with any rule or portion thereof it considers to be adjective or interpretive, a statement indicating that it is the opinion of the administrative code committee that the rule or portion thereof is adjective or interpretive and therefore advisory only. If the committee requests the statement to be published for an adopted rule not scheduled for reprinting in the ARM, the cost of publishing the statement in the ARM shall be borne by the committee.

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 2, chapter 4, and the provisions of Title 2, chapter 4, apply to section 1.

Approved April 27, 1983.

CHAPTER NO. 638

AN ACT AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO CONTRACT WITH A SENIOR CITIZENS' ORGANIZATION TO ESTABLISH A MOCK LEGISLATURE; APPROPRIATING MONEY FOR THE CONTRACT ON A MATCHING BASIS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana's senior citizens are a vital source of information, answers, and solutions for problems and concerns facing the entire state of Montana; and

WHEREAS, Montana's senior citizens are leaders in the field of volunteerism, dedicating their time, money, and expertise to the task of solving Montana's economic and social problems; and

WHEREAS, ideas originating from Montana senior citizens have often been enacted into law by the Montana Legislature.

THEREFORE, it is the intent of this bill to direct the Department of Social and Rehabilitation Services to cooperate with senior citizens in providing for the sponsorship of a senior citizens' mock legislature.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Senior citizens' legislature.** (1) The department of social and rehabilitation services may contract with a senior citizens' organization for the purpose of establishing a mock legislature to be held in the year preceding the legislative session.

(2) The department of social and rehabilitation services shall cooperate with the department of administration in assisting the senior citizens' organization designated to establish the mock legislature.

Section 2. **Appropriation.** (1) There is appropriated $5,000 from the general fund to the budget and contracts bureau of the community services division of the department of social and rehabilitation services for purposes of funding the senior citizens' legislature provided for in section 1.

(2) The contract entered into with the senior citizens' organization must provide that such organization match on a one-to-two (organization to department) ratio any amount contracted for.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 27, 1983.

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CHAPTER NO. 639

AN ACT GRANTING THE DIVISION OF WORKERS' COMPENSATION THE AUTHORITY TO EMPLOY AN ADEQUATE NUMBER OF QUALIFIED COAL MINE INSPECTORS AND TO PRESCRIBE THEIR DUTIES; AMENDING SECTION 50-73-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-73-401, MCA, is amended to read:

"50-73-401. Coal mine inspector. (1) The division shall *employ an adequate number of qualified* coal mine inspectors for the enforcement of this chapter *and shall prescribe their duties.*

(2) A person is not eligible to be a state coal mine inspector unless he is a citizen of the United States, a resident of this state, *and* has been actually employed in coal mining 5 years before his appointment.

(3) A state coal mine inspector may not act as agent for a corporation, superintendent, or manager of a mine and shall in no manner be in the employ of mining companies, nor shall he be interested in any way in coal mining operations, either as owner, lessee, or otherwise."

Approved April 27, 1983.

CHAPTER NO. 640

AN ACT TO PROMOTE THE GENERAL WELFARE IN IMPLEMENTATION OF ARTICLE XII, SECTION 2, OF THE MONTANA CONSTITUTION BY ALLOWING EMPLOYEES OF MUNICIPAL AND COUNTY GOVERNMENTS TO AGREE TO WORK MORE THAN 8 HOURS A DAY AND TO AGREE TO A 7-DAY, 40-HOUR WORK PERIOD AND BY ALLOWING EMPLOYEES OF HOSPITALS AND SIMILAR ESTABLISHMENTS TO AGREE TO A 14-DAY, 80-HOUR WORK PERIOD; AMENDING SECTIONS 39-3-406 AND 39-4-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

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(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

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(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(n) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(o) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day

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period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee."

Section 2. Section 39-4-107, MCA, is amended to read:

"39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. *This* subsection does not apply *in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).*

(2) For firefighters in cities of the first and second class, a workweek consists of a maximum of 40 hours during a 5-day week.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) *In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:*

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when no bargaining unit is recognized."

Approved April 27, 1983.

CHAPTER NO. 641

AN ACT REVISING AND CLARIFYING THE DEFINITION OF LONG-TERM CARE FACILITY; ADDING A DEFINITION OF INTERMEDIATE DEVELOPMENTAL DISABILITY CARE; AMENDING SECTION 50-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, free-standing or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected persons" means the applicant, members of the public who are to be served by the proposal, health care facilities located in the geographic area affected by the application, agencies which establish rates for health care facilities, and agencies which plan or assist in planning for such facilities, including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(6) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(7) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(8) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(9) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking.

(10) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(11) "Federal acts" means federal statutes for the construction of health care facilities.

(12) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(13) "Health care facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies,

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hospitals, infirmaries, kidney treatment centers, long-term care facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(14) "Health maintenance organization" means a public or private organization organized as defined in 42 U.S.C. 300e, as amended.

(15) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(16) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(17) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(18) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accredidation status to any health care facility that it finds meets its standards and requirements.

(19) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(20) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, *or intermediate developmental disability care* to a total of two or more persons or personal care to more than three persons who are not related to the owner or administrator by blood or marriage. *The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, boarding or foster homes for children licensed under 41-3-503, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.*

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

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(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(21) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(22) "New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency.

(23) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(24) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(25) "Offer" means the holding out by a health care facility that it can provide specific health services.

(26) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

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(27) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(28) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(29) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(30) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(31) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(32) "State plan" means the state medical facility plan provided for in part 4."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 27, 1983.

CHAPTER NO. 642

AN ACT TO REESTABLISH THE BOARD OF WATER WELL CONTRACTORS; TO DELETE SPECIFIC FEES AND PROVIDE THAT THE BOARD ESTABLISH FEES; TO DECREASE THE TIME FOR LICENSE REAPPLICATION AFTER THE FAILURE TO PASS AN EXAMINATION; TO INCREASE THE BOND REQUIREMENT; TO ELIMINATE THE REQUIREMENT THAT A COMPLAINANT MUST APPEAR PERSONALLY BEFORE THE BOARD; TO ALLOW LICENSURE BASED UPON RECIPROCITY; AMENDING SECTIONS 2-8-103, 37-43-303, 37-43-305 THROUGH 37-43-307, AND 37-43-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of water well contractors is reestablished for 6 years pursuant to 2-8-122, with its existing statutory authority and rules.

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Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horseracing, department of commerce, created by 2-15-1881;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of commerce, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105.

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(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

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(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates on July 1, 1989: board of water well contractors, department of commerce, created by 2-15-1862."

Section 3. Section 37-43-303, MCA, is amended to read:

"**37-43-303. Application — fee.** (1) A person desiring to engage in the drilling, making, or construction of one or more wells for underground water in this state shall first file an application with the department for a contractor's license, setting out his qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee *prescribed by the board* for filing the application of a person. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(3) A license to construct water wells shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters."

Section 4. Section 37-43-305, MCA, is amended to read:

"**37-43-305. Examination and qualifications.** (1) Under rules pertaining to the business of drilling and contracting for drilling of water wells which the board adopts, the department shall, subject to 37-1-101(4), inquire by examination or otherwise into the qualifications of applicants for licenses to drill or make wells for the production of underground

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waters in this state. Examinations may be oral, written, or both. The qualifications required by the board are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of underground geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) the applicant must have completed a minimum of 1 year apprenticeship under the direct supervision of a licensed water well contractor.

(2) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of *3* months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee."

Section 5. Section 37-43-306, MCA, is amended to read:

"37-43-306. Bond to be required. The department, on issuance of a license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or in lieu thereof its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the penal sum of *$4,000*, conditioned that the licensee will comply with the rules of the board and reasonable requirements made by the board in connection with the drilling of an individual well."

Section 6. Section 37-43-307, MCA, is amended to read:

"37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee *as prescribed by the board.*

(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke

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at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling in this state or contracting therefor, he must apply under 37-43-303 and 37-43-304. Notice of suspension shall be given a licensee when the suspension occurs."

Section 7. Section 37-43-311, MCA, is amended to read:

"37-43-311. Suspension and revocation of license — grounds — procedure. (1) A license issued under this chapter may be suspended or revoked by the board in cases other than failure of a licensee to renew the license after notice and hearing:

(a) in the event the licensee has violated a condition of the bond maintained by him as a prerequisite to issuance of the license;

(b) for the practice of fraud or deceit in obtaining a license;

(c) for gross negligence;

(d) for incompetence;

(e) for conviction of a felony; or

(f) for violating the requirements of this chapter.

(2) Any person may make complaint against a licensee. Complaints shall be in writing, signed by the complainant, and must specify the charges against the licensee. The board on its own motion or on receipt of a complaint shall hold a hearing on charges.

(3) A person bringing the complaint has the burden of proof and *may, at the discretion of the board, be required to* appear in person. A unanimous vote of the board is required in order to revoke or suspend a license. If a suspension is directed by the board, it may not be for a period in excess of 1 year."

Section 8. **Reciprocity.** If a person holding a license entitling him to drill water wells in another state applies for a Montana water well contractor's license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells in this state.

Section 9. **Codification instruction.** Section 8 is intended to be codified as an integral part of Title 37, chapter 43, and the provisions of Title 37, chapter 43, apply to section 8.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

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CHAPTER NO. 643

AN ACT AUTHORIZING THE ISSUANCE AND SALE OF LONG-RANGE BUILDING PROGRAM BONDS AND REFUNDING BONDS; PROVIDING FOR AN AGREEMENT BETWEEN THE BOARD OF EXAMINERS AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Authorization of bonds.** The board of examiners is authorized to issue and sell long-range building program bonds in an amount not exceeding $39,334,695, over and above the amount of long-range building program bonds outstanding January 1, 1983, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 4. The board of examiners is also authorized to refund such bonds in accordance with Title 17, chapter 5, part 3, if it is deemed that such refunding would be in the best interest of the state. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell long-range building program bonds or refunding bonds.

Section 2. **Authorization for refunding bonds.** The board of examiners is authorized to issue and sell refunding bonds in an amount necessary to refund any or all long-range building program bonds heretofore issued under Title 17, chapter 5, part 4. The refunding bonds are to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 3. The refunding bonds shall be general obligations secured by a pledge of the full faith and credit and taxing powers of the state. Any money which may be released from the sinking fund account provided for in 17-5-405 as a result of the issuance of refunding bonds shall revert to the fund of origin to the extent not required to provide for the debt service on the refunded bonds. Money required for payment of debt service on the refunded bonds may be held in trust in a special escrow account at a bank or trust company for the benefit of the refunded bonds.

Section 3. **Agreement with the department of fish, wildlife, and parks.** If the proceeds of any bonds or notes issued pursuant to Title 17, chapter 5, part 4, are appropriated for the construction or renovation of fish hatcheries or regional headquarters facilities of the department of fish, wildlife, and parks, the board of examiners and the department of fish, wildlife, and parks may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves required under such bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for construction or renovation costs must be credited against the department's payment obligation. The agreement must also

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allow for the accumulation of reserves during the first year the bonds are outstanding. Payments by the department must be made from funds available therefor.

Section 4. **Benefit of state.** The agreement made pursuant to [section 3] is solely for the benefit of the state of Montana and is not enforceable by bondholders or other third-party beneficiaries.

Section 5. **Coordination instruction.** If House Bill 511 is passed and approved, the bonds authorized under this act must be issued pursuant to House Bill 511, and the references to Title 17, chapter 5, part 4, in sections 1 through 3 are changed to House Bill 511.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

CHAPTER NO. 644

AN ACT SPECIFYING THAT THE DEPARTMENT OF REVENUE MUST USE A CERTAIN METHOD IN VALUATION OF AGRICULTURAL LAND; AMENDING SECTION 15-7-201, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-201, MCA, is amended to read:

"15-7-201. Legislative intent — value of agricultural property. *(1)* Since the market value of many *agricultural* properties is based upon speculative purchases which do not reflect the productive capability of *agricultural land*, it is the legislative intent that bona fide *agricultural* properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land shall be classified according to its use, which classifications shall include but not be limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land shall be assessed at a value that is fairly based on its ability to produce, taking into consideration the classification system in existence on [effective date of this act], provided, however, the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs shall be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value such land would have if it were not irrigated.

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(4) Capital costs such as improved water distribution, fertilizer, and land shaping that increase productivity shall not be used in determining assessed values."

Section 2. **Delayed effective date.** Section 1 is effective January 1, 1986.

Approved April 27, 1983.

CHAPTER NO. 645

AN ACT TO GRANT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AUTHORITY TO ADMINISTER THE STATE PLAN ON AGING, TO COORDINATE SERVICES TO THE AGED, AND TO ESTABLISH OR REDESIGNATE PLANNING AND SERVICE AREAS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [this act], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Older Americans Act" means the Older Americans Act of 1965, as amended, 42 U.S.C. 3001, et seq.

(3) "Planning and service area" means a geographic area of the state that is designated for purposes of planning, development, delivery, and overall administration of services under the Older Americans Act.

(4) "Services to the aged" means those services the department administers pursuant to the Older Americans Act.

(5) "State plan" means a plan developed by the department to coordinate and administer delivery of services under the Older Americans Act.

Section 2. **Purpose.** The purpose of [this act] is to grant the department authority to develop and administer the state plan on aging, to coordinate services to the aged pursuant to the Older Americans Act, and to establish or redesignate planning and service areas pursuant to section 305 of that act. It is the intent of the legislature that the number of planning and service areas be limited so that unnecessary administrative costs are eliminated.

Section 3. **Existing planning and service areas grandfathered — exception.** The 11 planning and service areas existing [on passage and approval] are grandfathered in for a period of not less than 4 years. However, the department may accept and consider requests from such existing planning and service areas that the requesting area be divided into two new areas and may grant one request and divide the area into two new

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areas. If the department grants a request and divides the requesting area into two new areas, this section's grandfather clause applies to the two new areas.

Section 4. **State plan on aging.** The department may administer and develop the state plan on aging.

Section 5. **Designation of planning and service areas.** (1) On or before October 1, 1983, and every 4 years following, the department shall redesignate the planning and service areas it utilizes for services to the aged.

(2) The department shall fix the number of planning and service areas at no less than 7 and no more than 12.

(3) Planning and service areas shall follow either recognized county boundaries or Indian reservation boundaries, or both.

(4) The department may designate a combination of Indian reservations as a planning and service area for any reservations that have applied to be designated under a consortium supported by their respective tribal governments.

Section 6. **Departmental rules.** The department shall adopt rules to administer and implement [this act].

Section 7. **Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 53, chapter 5, and the provisions of Title 53, chapter 5, apply to sections 1 through 6.

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

CHAPTER NO. 646

AN ACT TO INCREASE THE AMOUNT AUTHORIZED FOR EVENING MEAL REIMBURSEMENT FOR STATE EMPLOYEES AND CERTAIN OFFICIALS ENGAGED IN STATE BUSINESS WHILE AWAY FROM THEIR DESIGNATED HEADQUARTERS BUT WITHIN THE STATE; AMENDING SECTION 2-18-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-501, MCA, is amended to read:

"2-18-501. Meals, lodging, and transportation of persons in state service. Every elected official, appointed members of boards, commissions, councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

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(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $55 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $24 per day except as provided in subsection (3), plus $3 for the morning meal, $3.50 for the midday meal, and *$8* for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized the actual cost of lodging in addition to a meal allowance not to exceed $30 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $50 per day, except as provided in subsection (3), plus $4 for the morning meal, $6.50 for the midday meal, and $12 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) All other elected state officials, appointed members of boards, commissioners, council, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas where the actual cost of lodging shall be reimbursed.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(5) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(6) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(7) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(8) All commercial air travel shall be by the least expensive class service available."

Approved April 27, 1983.

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CHAPTER NO. 647

AN ACT TO PROVIDE FOR THE NEGOTIATED SALE OF COUNTY, MUNICIPAL, AND SCHOOL DISTRICT GENERAL OBLIGATION REFUNDING BONDS AND MUNICIPAL REVENUE REFUNDING BONDS; TO PROVIDE FOR THE ISSUANCE OF ADVANCE REFUNDING GENERAL OBLIGATION BONDS BY COUNTIES, MUNICIPALITIES, AND SCHOOL DISTRICTS; AMENDING SECTIONS 7-7-2302, 7-7-4302, 7-7-4311, 7-7-4501, 7-7-4503, AND 20-9-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2302, MCA, is amended to read:

"**7-7-2302. Applicability of certain other bond provisions.** The provisions of 7-7-2203 through 7-7-2211, 7-7-2222, and *7-7-2255* through 7-7-2274 apply to refunding bonds issued under this part*; however, the board of county commissioners may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-2251 through 7-7-2254.*"

Section 2. Section 7-7-4302, MCA, is amended to read:

"**7-7-4302. Applicability of certain other bond provisions.** The provisions of 7-7-4201 through 7-7-4210 and *7-7-4255* through 7-7-4274 apply to refunding bonds issued under this part*; however, the city or town council may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-4251 through 7-7-4254.*"

Section 3. Section 7-7-4311, MCA, is amended to read:

"**7-7-4311. Procedure to issue refunding general obligation bonds.** In order to issue bonds to refund bonds theretofore issued and outstanding, it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds and fixing and determining the details thereof, *including whether the bonds will be sold at a private negotiated sale or public sale.*"

Section 4. Section 7-7-4503, MCA, is amended to read:

"**7-7-4503. Exchange or sale of refunding revenue bonds.** (1) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold *at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-4433 and 7-7-4434* at a price not less than par plus accrued interest.

(2) Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor except in accordance with the terms of such outstanding bond."

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Section 5. Section 7-7-4501, MCA, is amended to read:

"7-7-4501. Authority to issue refunding revenue bonds. (1) In addition to the powers which it now may have, any municipality shall have the power under this part to refund bonds issued for any of the purposes listed in 7-7-4421(1), whether issued under authority of part 45 or of any other applicable law.

(2) Refunding revenue bonds issued as authorized in this section shall be governed by all of the provisions of part 44, *except 7-7-4433 and 7-7-4434,* as fully as bonds issued for the initial financing of any undertaking and by the further provisions of this part.

(3) Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand."

Section 6. Section 20-9-412, MCA, is amended to read:

"20-9-412. Issuance of refunding bonds without an election. (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue bonds for such purpose, the trustees, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be redeemed;

(b) the reasons for issuing new bonds; and

(c) the term and details of the new bond issue.

(2) After the adoption of such resolution, the trustees shall:

(a) sell the bonds at a private negotiated sale; or

(b) at their option, give notice of the sale of such new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election *and sell such* new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Bonds shall not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least ½ of 1% per annum less than the rate of interest in the bonds to be refunded or redeemed.

(4) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, provided the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. Funds so deposited shall be invested in securities which are general obligations of the United States or the principal and interest of which are guaranteed by the United States and which mature or are callable at the option of the holder on such dates and bear interest

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at such rates and payable on such dates as shall be required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption, and to pay the principal thereof at maturity or upon such redemption date, and to pay any redemption premium. The escrow account shall be irrevocably appropriated to the payment of the principal of and interest and redemption premium, if any, on the refunded bonds. Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal of or interest thereon due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation."

Section 7. **Advance refunding bonds.** The board of county commissioners may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, provided the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. Funds so deposited shall be invested in securities which are general obligations of the United States or the principal and interest of which are guaranteed by the United States and which mature or are callable at the option of the holder on such dates and bear interest at such rates and payable on such dates as shall be required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption, and to pay the principal thereof at maturity or upon such redemption date, and to pay any redemption premium. The escrow account shall be irrevocably appropriated to the payment of the principal of and interest and redemption premium, if any, on the refunded bonds. Funds to the credit of the sinking fund account for the payment of the refunded bonds and not required for the payment of principal of or interest thereon due prior to issuance of the refunding bonds may be appropriated by the county to the escrow account. The county may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-2203 or any other debt limitation.

Section 8. **Advance refunding bonds.** A city or town may issue refunding bonds pursuant to this section to refund outstanding bonds in advance of the date on which such bonds mature or are subject to redemption, provided that proceeds of the refunding bonds, less any accrued interest or premium received upon the sale thereof, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. Funds so deposited shall be invested in securities which are general obligations of

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the United States or the principal and interest of which are guaranteed by the United States and which mature or are callable at the option of the holder on such dates and bear interest at such rates and payable on such dates as shall be required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption, and to pay the principal thereof at maturity or upon such redemption date, and to pay any redemption premium. The escrow account shall be irrevocably appropriated to the payment of the principal of and interest and redemption premium, if any, on the refunded bonds. Funds to the credit of the sinking fund account for the payment of the refunded bonds and not required for the payment of principal of or interest thereon due prior to issuance of the refunding bonds may be appropriated by the city or town to the escrow account. The city or town may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds refunded pursuant to this part are not to be considered outstanding for purposes of 7-7-4201 or any other debt limitation.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

CHAPTER NO. 648

AN ACT PROVIDING A CREDIT AGAINST INDIVIDUAL PARTNERSHIP, SMALL BUSINESS CORPORATION, OR CORPORATE INCOME TAX LIABILITY FOR CAPITAL EXPENDITURES FOR COMMERCIAL SYSTEMS THAT GENERATE ELECTRICITY BY MEANS OF WIND POWER; PROVIDING FOR LIMITATION ON AND CARRYOVER OF THE CREDIT; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose and statement of policy.** The purpose of [this act] is to encourage the development of a wind energy industry in Montana without adversely affecting tax revenues received from existing economic activity in the state. Because of the wind energy potential within the state, it is desirable to encourage wind energy generation for the purpose of attracting wind energy manufacturing industries to the state. It is also desirable for new or expanded industry to secure wind-generated electricity on a direct contract sales basis without adversely affecting rates charged to other electricity users. Sound fiscal policy requires that encouragement be given to a wind energy industry without subtracting from existing sources of revenue to the state.

Section 2. **Commercial investment credit — wind-generated electricity.** (1) An individual, corporation, partnership, or small business corporation as defined in 15-31-201 that makes an investment of $5,000 or

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more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system located in Montana which generates electricity by means of wind power is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce wind energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the wind energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the wind energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue Code of 1954, as amended, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system.

Section 3. **Limitation on credit.** Whenever any federal wind energy tax credits for a system that generates electricity by means of wind power are allowed or allowable under section 48(1) of the Internal Revenue Code or any other federal law, the state credit allowed by [section 2] must be reduced by the amount of federal credits so that the effective credit does not exceed 60% of the eligible costs.

Section 4. **Carryover of credit.** The tax credit allowed under [section 2] is to be deducted from that portion of the taxpayer's tax liability as set forth in [section 2(1)] for the taxable year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding taxable year or years until the total amount of the tax credit, subject to the limitation of [section 3], has been deducted from tax liability. However, no credit may be carried beyond the seventh taxable year succeeding the taxable year in which the equipment was placed in service.

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Section 5. **Exclusion from other tax incentives.** If a credit is claimed for an investment pursuant to [this act], no other state energy or investment tax credit, including but not limited to the tax credits allowed by 15-30-162, 15-31-123 through 15-31-125, [and the credits provided in SB 241], may be claimed for the investment. Property tax reduction allowed by 15-6-201(3) may not be applied to a facility for which a credit is claimed pursuant to [this act].

Section 6. **Separation of credit portion.** In the case of a business, a portion of which qualifies for the credit pursuant to [section 2] and a portion of which does not qualify for the credit, taxes due from each portion must be separated by using the three-factor formula provided in 15-31-305.

Section 7. **Rules authorized.** The department of revenue is authorized to adopt rules to implement [this act]. The purpose of such rules must be to insure the following:

(1) proper and efficient administration of [this act];

(2) proper reporting of information and payment of any amounts due by persons claiming the credit pursuant to [this act];

(3) the claiming of the credit only against taxes due as a consequence of income produced by new economic activity in the state as described in [section 2].

Section 8. **Coordination instruction.** If Senate Bill No. 241 is not passed and approved, the bracketed language [and the credits provided in SB 241] in section 5 is deleted from this act.

Section 9. **Effective and applicability date.** This act is effective on passage and approval and applies to tax years beginning after December 31, 1982.

Approved April 27, 1983.

CHAPTER NO. 649

AN ACT TO ESTABLISH SCHEDULES FOR THE TAX INCENTIVE FOR THE PRODUCTION OF ALCOHOL TO BE BLENDED FOR GASOHOL; TO PROVIDE FOR LICENSING OF AND REPORTING BY ALCOHOL DISTRIBUTORS; TO RESCIND THE SUSPENSION PROVISION; AMENDING SECTIONS 15-70-204 AND 15-70-221, MCA; REPEALING SECTION 3, CHAPTER 576, LAWS OF 1979; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 11] may be cited as the "Alcohol Tax Incentive and Administration Act of 1983".

Section 2. **Purpose.** The purpose of [sections 1 through 11] is to establish schedules for the tax incentive for the production of alcohol to

be blended for gasohol and to provide for the proper administration and enforcement of the tax incentive. The schedules for the tax incentive are designed to stimulate the development of alcohol fuel production in Montana while limiting the cost to the state of the tax incentive to amounts that are reasonable in relation to the highway revenue needs of Montana.

Section 3. **Definitions.** As used in [sections 1 through 11], the definitions in 15-70-201 and the following definitions apply:

(1) "Alcohol distributor" means any person who, for the purpose of making gasohol:

(a) engages in the business of producing alcohol for sale, use, or distribution in this state; or

(b) imports alcohol for sale, use, or distribution in this state.

(2) "Department" means the department of revenue.

(3) "Gasohol dealer" means any person who blends alcohol with gasoline to produce gasohol for sale, use, or distribution in this state.

Section 4. **License of alcohol distributors.** Every alcohol distributor, prior to doing business, shall file with the department an application for a license, using forms prescribed and furnished by the department and setting forth such information as may be requested by the department. Upon approval of the application, the department shall issue the distributor a nonassignable license that continues in force until surrendered or canceled.

Section 5. **Distributor's statement.** Each alcohol distributor shall, not later than the 25th day of each calendar month, render to the department a statement, signed by him, that includes the following:

(1) the number of gallons of alcohol manufactured or imported by the distributor during the preceding calendar month;

(2) the name of each gasohol dealer to whom he sold alcohol and the number of gallons sold to each dealer; and

(3) such other information as the department may reasonably require to administer the tax laws of this state.

Section 6. **Recordkeeping requirements.** The records of each alcohol distributor and gasohol dealer must be kept for a period of not more than 3 years and must include receipts, invoices, and such other information as the department may require.

Section 7. **Examination of records.** The department or its authorized representative may examine the books, papers, records, and equipment of any alcohol distributor or gasohol dealer.

Section 8. **Denaturing alcohol — refund authorized.** Any alcohol distributor who, for the purpose of denaturing alcohol distilled in Montana, purchases gasoline on which the Montana gasoline tax has been paid is entitled to a refund, computed as allowed in 15-70-221, of tax paid on the gasoline used.

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Section 9. **Tax incentive for production of alcohol.** (1) There is a tax incentive payable to alcohol distributors for distilling alcohol to be blended with gasoline for sale as gasohol provided the alcohol is distilled in Montana from Montana agricultural products. Payment shall be made by the department of revenue out of the amount collected under 15-70-204.

(2) Except as provided in subsection (3), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is:

(a) beginning July 1, 1983, 70 cents per gallon;

(b) beginning April 1, 1985, 50 cents per gallon;

(c) beginning April 1, 1986, 30 cents per gallon; and

(d) beginning April 1, 1989, and thereafter, there is no tax incentive.

(3) The incentive schedule provided for in subsection (2) shall be modified in response to market conditions as follows:

(a) If for any 2 consecutive calendar quarters ending on or before September 30, 1984, the gallons of gasohol sold comprise 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold, the tax incentive for alcohol shall be 50 cents per gallon effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold comprised 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold.

(b) If for any 2 consecutive calendar quarters ending on or before September 30, 1986, the gallons of gasohol sold comprise 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold, the tax incentive for alcohol shall be 30 cents per gallon effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold comprised 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold.

(c) If for any 2 consecutive calendar quarters ending on or before September 30, 1988, the gallons of gasohol sold comprise 18% or more of the total gallons of nonaviation gasoline and gasohol sold, the tax incentive for alcohol shall be eliminated effective beginning the second calendar quarter after the 2 consecutive quarters during which the gallons of gasohol sold comprised 18% or more of the total gallons of nonaviation gasoline and gasohol sold.

(d) Each quarter, the department shall compute the share of the total nonaviation gasoline and gasohol market that is represented by gasohol, according to the information contained in gasoline distributors' returns.

Section 10. **Application for payment of tax incentive.** (1) The claimant shall apply for payment of tax incentive by signed statement, on a form furnished by the department, accompanied by the original production records and invoices issued to the gasohol dealer at the time of sale and delivery, showing total gallons of alcohol sold.

(2) Application for the payment of the tax incentives must be filed with the department not later than the 25th day of the calendar month following the month for which the claim is being made.

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(3) The payment of the tax incentives shall be reduced by the amount of tax provided for in 15-70-204(3) that is due on alcohol to be blended for gasohol.

Section 11. **Penalty for failure to file.** Any alcohol distributor who fails to obtain a license under [section 4] or to file the statements required by [section 5] in the manner or within the time provided in [section 5] or who makes any false statement is guilty of a misdemeanor and upon conviction must be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both.

Section 12. Section 15-70-204, MCA, is amended to read:

"15-70-204. Gasoline license tax — rate. (1) Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department of commerce as provided by 67-1-301, as amended, and 8 cents for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported or sold for export out of the state shall not be included in the measure of the distributor's license tax.

(3) *Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1).*"

Section 13. Section 15-70-221, MCA, is amended to read:

"15-70-221. Refund authorized. (1) Any person who shall purchase and use any gasoline on which the Montana gasoline license tax has been paid for *denaturing alcohol to be used in gasohol or* operating or propelling stationary gasoline engines, tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Such refund or drawback should in no instance exceed the tax paid or to be paid to the state and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the department of commerce by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid."

Section 14. **Repealer.** Section 3, Chapter 576, Laws of 1979, is repealed.

Section 15. **Codification instruction.** Sections 1 through 11 are intended to be codified as an integral part of Title 15, chapter 70, and the provisions of Title 15, chapter 70, part 1, apply to sections 1 through 11.

Section 16. **Effective date.** This act is effective July 1, 1983.

Approved April 27, 1983.

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CHAPTER NO. 650

AN ACT TO ESTABLISH A PLANNING FRAMEWORK FOR THE DEVELOPMENT OF A NATURAL RESOURCE INFORMATION SYSTEM AND TO ESTABLISH AN ONGOING MONTANA NATURAL HERITAGE PROGRAM; AND PROVIDING AN APPROPRIATION.

WHEREAS, various departments of state government, including the Departments of Natural Resources and Conservation; Fish, Wildlife, and Parks; State Lands; Health and Environmental Sciences; and Agriculture and various branches of the university system independently collect natural resource information for different purposes, using manual and automated methods; and

WHEREAS, although ideally there should be an integrated natural resource information system, such a sophisticated system would be extremely costly because of the unique and distinctly different requirements of each department; and

WHEREAS, efforts should be made to expedite the development of separate but compatible systems and to catalog this data and make it available for department and statewide use; and

WHEREAS, a natural heritage program begins by developing a classification system to conceptually organize the elements of natural diversity in the state, and this classification serves as a framework for categorizing natural landscape information to facilitate comparison of similar elements and recognize dissimilar elements; and

WHEREAS, 33 states have already developed programs to collect and manage information on their natural heritage, and the methods used by those state programs are available to Montana; and

WHEREAS, the classification system embodied in the natural heritage program should be a working one that retains the flexibility to be changed as need dictates so that new categories may be added or preexisting categories subdivided and, within classes, elements may be added or deleted as new information becomes available; and

WHEREAS, a natural heritage program is needed to eliminate costly duplication and enhance the efficiency of natural resource data collection and to provide a valuable source of that information for state government, industry, and other groups.

THEREFORE, the State of Montana, as a first step in developing a natural resource information system establishes a Montana Natural Heritage Program.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** It is the purpose of [sections 1 through 9] to establish a planning framework for the development of a natural resource information system and to establish an ongoing Montana natural heritage program.

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Section 2. **Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Committee" means the natural resource data system advisory committee created by [section 3].

(2) "Department" means the department of administration created by 2-15-1001.

(3) "Natural heritage program" means a program of information acquisition, storage, and retrieval for data relating to the flora, fauna, and biological community types of Montana.

(4) "Principal data source agencies" means any of the following state agencies: the department of natural resources and conservation, the department of fish, wildlife, and parks, the department of state lands, the department of health and environmental sciences, the department of agriculture, the department of highways, the state historical society, and the Montana university system.

Section 3. **Natural resource data system advisory committee.** (1) There is a natural resource data system advisory committee consisting of an employee of the environmental quality council and of each principal data source agency appointed by the head of the respective state agency, and by the board of regents of higher education for the Montana university system.

(2) The committee shall examine the following matters and make recommendations to the department head concerning:

(a) criteria for the categories and types of data to be collected for a natural resource information system;

(b) criteria for the format of data collection;

(c) identification of existing sources of relevant data in the public sector;

(d) identification of data acquisition, storage, and retrieval methodologies that are economical and efficient, that minimize or eliminate the duplication of data bases, and that utilize computer networking;

(e) probable costs to agencies furnishing required data and probable costs of managing the data;

(f) probable benefits to be realized by the establishment of a natural resource information system;

(g) operation of the Montana natural heritage program; and

(h) other items the committee considers of importance to the establishment of a natural resource information system.

(3) The department shall provide staff support to the committee, within the limits of the department's available resources.

(4) Committee members while engaged in committee business are entitled to be reimbursed for travel expenses as provided for in 2-18-501

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through 2-18-503. These expenses shall be borne by the agency employing the member. Each member serves at the pleasure of the respective appointing authority. The committee shall establish its own format for the conduct of meetings.

Section 4. **Natural resource information system.** (1) The department, in consultation with the committee, shall establish a planning framework for the implementation of a natural resource information system. This system is to be a comprehensive program for the acquisition, storage, and retrieval of existing data relating to the natural resources of Montana.

(2) The department shall give attention to the factors listed in subsection (2) of [section 3] and shall prepare any legislation necessary to implement the system.

(3) It is not intended that the system shall require fieldwork or literature searches to produce data. The system is intended to facilitate the management of data collected by state agencies in the normal course of their operations.

Section 5. **Natural heritage program.** (1) There is a Montana natural heritage program to be operated by the department. In order to establish the program, the department may contract with an independent contractor for a period not to exceed 2 years.

(2) The Montana natural heritage program shall be designed to be compatible with similar programs in other states. This program is to be an initial step in the formulation of the comprehensive natural resource information system referred to in [section 4] and is to be considered a part of the system.

Section 6. **Interagency cooperation.** (1) State agencies shall cooperate with the department and the committee in the planning of the natural resource information system.

(2) Within the limits of available resources, state agencies shall provide data requested by the department for purposes of the Montana natural heritage program. If an agency does not possess requested data or is unable to locate requested data, the agency shall inform the department. It is not necessary for an agency to conduct fieldwork or literature searches to obtain requested data.

Section 7. **Availability of information.** (1) Except as provided in subsection (3), the department shall make information from the natural resource information system available to local, state, and federal agencies and to the general public.

(2) The department may establish a fee system for information requests in order to cover the costs of providing requested information.

(3) If necessary, the department shall establish procedures to protect confidential information in the possession of state agencies.

Section 8. **Environmental quality council to monitor activities of department and committee.** The environmental quality council

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shall monitor and evaluate the activities of the department and the committee under [sections 1 through 7] and shall report its findings and recommendations to the legislature by November 1, 1984.

Section 9. **Appropriation and funding.** (1) There is appropriated from the general fund the amount of $500 for the biennium ending June 30, 1985, to the department of administration for the establishment of the Montana natural heritage program and for support services to the natural resource data system advisory committee.

(2) The department of administration may apply for and may receive funding from private and public sources for the purposes of [sections 1 through 8] and any such funds are appropriated to the department for such purposes.

Approved April 27, 1983.

CHAPTER NO. 651

AN ACT TO PROVIDE FOR THE TRANSFER OF AUTHORITY OF THE COUNTY DEPARTMENT OF PUBLIC WELFARE TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AT THE OPTION OF THE BOARD OF COUNTY COMMISSIONERS; AUTHORIZING A WORKFARE REQUIREMENT FOR STATE AND COUNTY GENERAL RELIEF RECIPIENTS; ESTABLISHING A WAGE OPTION FOR WORKFARE RECIPIENTS; AMENDING SECTIONS 53-2-301, 53-2-302, 53-2-304, 53-2-306, 53-2-307, 53-2-322, 53-2-323, 53-3-301, AND 53-3-304, MCA; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [sections 1 through 8] is to provide for the department of social and rehabilitation services to assume all responsibilities for public assistance programs and protective services for children and adults that, as of July 1, 1983, are provided by the counties pursuant to Titles 41 and 53. The assumption may become effective only at the option and with the express consent of each individual county requesting state assumption.

Section 2. **Definitions.** Unless the context requires otherwise, in [sections 1 through 8] the following definitions apply:

(1) "County department" means the county department of public welfare provided for in Title 53, chapter 2, part 3.

(2) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(3) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

(4) "Needy person" is one who is eligible for public assistance under the laws of this state.

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(5) "Protective services" means services to children and adults to be provided by the department as permitted by Titles 41 and 53.

(6) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county department, regardless of the original source of assistance.

(7) "State assumption" means the transfer to the department for the county by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-307 and public assistance and protective services provided by the county department pursuant to Titles 41 and 53, except as otherwise specifically provided in [sections 1 through 8].

Section 3. **Transfer of county public assistance and protective services to state department.** (1) All authority granted to the board of county commissioners to establish and operate a public assistance program and provide protective services for children and adults pursuant to Titles 41 and 53 may be transferred to the department, except that the county attorney shall continue to provide legal assistance and representation for the purposes of adult and child protective services without charge and all debts and obligations incurred prior to the effective date of state assumption continue as the responsibility of the county.

(2) The board of county commissioners, after public hearing, may by resolution or ordinance transfer to the department all powers and duties for public assistance and protective services for children and adults, including the selection, supervision, and termination of staff personnel associated with the performance of these activities. Upon the effective date of such transfer, the department shall assume all powers and duties related to public assistance and protective services and accorded by law to the county welfare department. If the notice required in subsection (3) is given, the transfer is effective at the start of the next state fiscal year.

(3) Counties opting for state assumption shall notify the department at least 90 days prior to the start of the state fiscal year unless the time period is waived in whole or in part by the director of the department.

(4) Counties opting for state assumption shall permit the department to use the same facilities currently occupied by the county department or substantially equal facilities, with fair rental value for such facilities to be paid by the department. Counties opting for state assumption shall transfer to the department all materials and supplies used in the operation of the county department and which were paid for in whole or in part with federal or state funds.

Section 4. **State assumption — permanent transfer to department — exceptions.** (1) A county opting for state assumption does so on a complete and permanent basis, unless the county requests to retain or reassume responsibility for medical assistance or monetary payments to needy persons as provided in Title 53, chapter 3, pursuant to the adoption of a resolution or ordinance as provided in [section 3(2)] and notice to the department as provided in [section 3(3)]. Under such a retention or reassumption, staff personnel continue under the supervision and control

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of the department but the department may contract with the counties for the operation of programs provided in Title 53, chapter 3. A county may not retain or reassume assistance programs partially funded by the federal government.

(2) A county transferring all duties and responsibilities to the department may reassume limited responsibility for medical assistance or monetary payments to needy persons as provided in subsection (1), but may not thereafter request full state assumption. A county initially requesting limited state assumption may not thereafter request full state assumption. A county opting for limited or full state assumption does so on a permanent basis, except as provided in this section.

Section 5. **Creation of advisory councils.** (1) The department may establish one or more advisory councils to advise the department on policies relating to public assistance or protective services. The director of the department shall appoint members of the advisory council for a term set by him, and they may be dismissed at his discretion.

(2) Upon request of the governing body of a county having opted for state assumption, the department shall establish a county advisory council for the county. The advisory council shall consist of the board of county commissioners of the county, or if the county governing body consists of greater than three members, three members of the governing body chosen by the governing body. The department may appoint two other members to the advisory council as provided in subsection (1).

(3) No compensation or expenses may be paid advisory council members for their service on the advisory council. The requirements of 2-15-122 do not apply to an advisory council appointed pursuant to this section.

Section 6. **Authority to adopt rules.** The department may adopt rules necessary to carry out the purposes of [sections 1 through 8], including implementing transfer of the county programs to the department. The department may adopt rules to determine the amount, scope, and duration of general relief, which may not exceed those services and amounts payable under the department's programs of medicaid and aid to families with dependent children as necessary to carry out the purposes of [sections 1 through 8].

Section 7. **Mill levy for counties transferring public assistance and protective services.** (1) (a) Except as provided in subsection (1)(b), for the purpose of [sections 1 through 8], 12 mills must be levied annually in those counties opting for state assumption.

(b) A county that levied an amount less than 12 mills for purposes of its county poor fund during fiscal year 1982 must levy an equivalent amount to the poor fund mill levy assessed by that county during fiscal year 1982, plus 1.5 mills not to exceed a total of 12 mills, less a mill levy equivalent to an amount the county can demonstrate was spent during fiscal year 1982 for the building or operation of a medical facility. The reduced mill levy exception provided in this subsection (1)(b) continues in effect until June 30, 1984. After that date 12 mills must be levied in all counties where state assumption is in effect.

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(2) The proceeds of the mill levy established in subsection (1) must be deposited in the earmarked revenue fund in the state treasury for the purpose of paying the expenses of the department. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department.

(3) For a county retaining or reassuming operational responsibility for medical assistance or monetary payments to needy persons as provided in [section 4], the levy provided in subsection (1) must be reduced by the mill levy equivalent expended by that county or the department for such purposes in the fiscal year immediately preceding the option to retain or reassume such responsibility.

Section 8. **Work program required.** The department shall establish a work program as provided in 53-3-304. The department may contract with the county, a municipality, or state agency that has work available for recipients of general relief.

Section 9. Section 53-2-301, MCA, is amended to read:

"53-2-301. County departments to be established. There shall be established in each county of the state, *except in a county that has transferred its public assistance and protective services responsibilities to the department of social and rehabilitation services under the provisions of [sections 1 through 8],* a county department of public welfare which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit."

Section 10. Section 53-2-302, MCA, is amended to read:

"53-2-302. County commissioners ex officio county welfare board. *Except in a county that has transferred its public assistance and protective services responsibilities to the department of social and rehabilitation services under [sections 1 through 8], the* board of county commissioners shall be the ex officio county welfare board and is hereby authorized to devote such additional time for public assistance matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but may not receive compensation for more than 1 day's work for all services performed on the same calendar day."

Section 11. Section 53-2-304, MCA, is amended to read:

"53-2-304. Staff personnel of county department. (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of social and rehabilitation services such staff

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personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the department of social and rehabilitation services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of social and rehabilitation services may supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department of social and rehabilitation services, but the department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause.

(2) Public assistance staff personnel attached to the county board shall be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the department of social and rehabilitation services from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs which are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of social and rehabiliation services, the reimbursement by the county board of public welfare may be less than the county share as prescribed above. All other administrative costs of the county department shall also be paid from county poor funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department of social and rehabilitation services shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within 20 days after the presentation of the claim, and the department of social and rehabilitation services shall credit (add) all such reimbursements to its account for administrative costs.

(4) If a county has transferred its public assistance and protective services responsibilities to the department of social and rehabilitation services under [sections 1 through 8], the department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All such personnel are directly responsible to the department."

Section 12. Section 53-2-306, MCA, is amended to read:

"**53-2-306. County department charged with local administration of public assistance.** *Except in a county that has transferred its public assistance and protective services responsibilities to the department of social and rehabilitation services under [sections 1 through 8], the* county department of public welfare shall be charged with the local

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administration of all forms of public assistance operations in the county, including but not limited to food stamp programs and social services programs. All such local administration must conform to federal and state law and the rules as established by the department of social and rehabilitation services."

Section 13. Section 53-2-307, MCA, is amended to read:

"53-2-307. County board to establish local administrative policies and rules. *Except in a county that has transferred its public assistance and protective services responsibilities to the department of social and rehabilitation services under [sections 1 through 8], the* county board of public welfare is responsible for establishing local policies and such rules as are necessary to govern the county department and local administration of public assistance activities, except that all such policies and rules must be in conformity with general policies and rules established by the department of social and rehabilitation services."

Section 14. Section 53-2-322, MCA, is amended to read:

"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary. *Counties transferring public assistance and protective services responsibilities to the department of social and rehabilitation services under [sections 1 through 8] may not levy more than the difference between 13.5 mills and the state levy pursuant to [section 7].*

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department of social and rehabilitation services shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all such activities.

(4) As soon as the preliminary budget provided for in 7-6-2315 has been agreed upon, a copy thereof shall without delay be mailed to the department of social and rehabilitation services, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department of social and rehabilitation services shall promptly examine the preliminary budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and

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shall notify the county clerk of its findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department of social and rehabilitation services without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services."

Section 15. Section 53-2-323, MCA, is amended to read:

"53-2-323. Emergency grants from state funds to counties. *Except when a county has transferred its public assistance and protective services responsibilities to the department of social and rehabilitation services under [sections 1 through 8], a* county may apply to the department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

(a) that the county will not be able to meet its obligations under law to provide assistance to the needy of the county or meet its proportionate share of any public assistance activity carried on jointly with the department;

(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;

(c) that all expenditures from the county poor fund have been lawfully made; and

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(d) that all expenditures from the county poor fund have been reasonable and necessary, according to criteria set by the department in rules adopted for that purpose, for the county to meet its obligations under law to provide assistance to the needy.

(2) Within 10 days of receipt of the application and affidavit, the department shall determine whether the county poor fund will be depleted and shall give notice to the county of the department's intention to deny or allow the grant-in-aid. Before a grant-in-aid for any fiscal year may be made to a county under this section, any money credited during that fiscal year to the depletion allowance reserve fund from the sources provided by 7-34-2402(2) shall be transferred to the county poor fund to be used for lawful poor fund expenditures. The amount of the grant-in-aid shall be determined after all sources of income available to the poor fund, including the depletion allowance reserve fund transfers, have been exhausted.

(3) Within 10 days of receiving notice from the department that a grant-in-aid will be made to the county, the board of county commissioners or other duly elected or appointed executive officer of the county shall adopt an emergency budget. There is no requirement of notice and hearing for that emergency budget. The emergency budget shall state the amount required to meet the obligation of the county and shall allocate that whole amount among the various classes of expenditures for which the grant was made.

(4) Upon receipt and approval of the county emergency budget, the department shall issue a warrant to the county treasurer of the county for the total amount stated in the approved emergency budget.

(5) The grant-in-aid received by the county shall be placed in an emergency fund account to be kept separate and distinct from the poor fund account. All expenditures from the emergency fund account shall be made by a separate series of warrants or checks marked as emergency warrants or checks.

(6) The grants-in-aid from the department may be used only for public assistance activities lawfully conducted by the county, including but not limited to medical aid, hospitalization, and institutional care. No part of a grant-in-aid may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances, or equipment for a county building.

(7) In the event the county poor fund is replenished by other lawful sources of revenue, the county shall issue warrants to meet its obligations from the county poor fund until such time as that fund is again so depleted that warrants can no longer lawfully be drawn on that account. Upon depletion of the county poor fund, the county may again make disbursements from the emergency fund account as provided in subsection (5). At the close of the county fiscal year, the county shall return to the department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year.

(8) Any amount which is unlawfully disbursed or transferred from the emergency fund account or used for a purpose other than that specified in the grant-in-aid shall be returned by the county to the department."

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Section 16. Section 53-3-301, MCA, is amended to read:

"53-3-301. Amount of general relief assistance to be determined by county board. *Except in a county that has transferred its public assistance and protective services responsibilities to the department of social and rehabilitation services under [sections 1 through 8], the* amount of general relief assistance granted any person or family shall be determined by the county board of public welfare, according to rules and standards of assistance established by the board and approved by the department."

Section 17. Section 53-3-304, MCA, is amended to read:

"53-3-304. Power to require recipient to perform work. *(1)* If the county has work available which a recipient of general relief is capable of performing *or the department of social and rehabilitation services is required to operate a work program under the provisions of [section 8],* then the county department of public welfare *or the department of social and rehabilitation services* may require *a* recipient to perform work at *the minimum wage or may pay a recipient at* the prevailing rate of wages paid by that county for similar work, to be paid from the county poor fund *or state funds* in place of granting him general relief.

(2) The county department of public welfare *or the department of social and rehabilitation services, as the case may be,* shall provide coverage under the Workers' Compensation Act for those recipients of general relief working under the provisions hereof and may enter into such agreements with the division of workers' compensation of the department of labor and industry as may be necessary to carry out the provisions of this section."

Section 18. **Appropriation.** To carry out the purposes of this act, the following is appropriated to the department of social and rehabilitation services for the biennium ending June 30, 1985:

(1) $8 million from the general fund; and

(2) all revenues accruing under the provisions of [section 7] of this act.

Section 19. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

CHAPTER NO. 652

AN ACT CREATING A YOUTH CONSERVATION CORPS PROGRAM WITHIN THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING THAT THE PROGRAM BE ADMINISTERED BY AN EXECUTIVE DIRECTOR; DEFINING THE EXECUTIVE DIRECTOR'S POWERS AND DUTIES; PROVIDING AN APPROPRIATION FOR ADMINISTERING THE PROGRAM; AND PROVIDING A TERMINATION DATE.

WHEREAS, Article IX, section 1, of the Montana Constitution states that the Legislature "shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources"; and

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WHEREAS, the Legislature finds that the young men and women of the State should be given an opportunity to participate in meaningful public service work and gain educational experience through acts of enhancing, protecting, and conserving the valuable resources of the State; and

WHEREAS, many public lands and environmental resources, including parks, rangelands, forests, wildlife habitats, fisheries, soils, and waters, are and will continue to be subject to resource production demand and public use; and

WHEREAS, to maintain, protect, and conserve the valuable resources of the State, programs need to be implemented that will assure continued economic productivity and scenic beauty, as well as the public health, safety, and social benefit; and

WHEREAS, the Legislature further finds that young people and natural resources of the State will be equally rewarded through the development of a public service conservation program that is designed to provide care for resources to a degree not now available and to develop among youth an understanding of the discipline, rewards, and pride of a hard day's work.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 10], unless the context clearly requires otherwise, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(2) "Corpsmember" means a person serving as an entry-level member of the youth conservation corps.

(3) "Corpsmember leader" means a person serving as a member of the youth conservation corps in a leadership or training capacity or who provides specialized services other than or in addition to those types of work and services generally performed by a corpsmember.

(4) "Department" means the department of labor and industry as provided for in 2-15-1701.

(5) "Supervisor" means a person in charge of corpsmembers and corpsmember leaders at residential and nonresidential youth conservation corps centers.

Section 2. **Youth conservation corps — head.** (1) There is a youth conservation corps program within the department. The program is a seasonal public service conservation program to provide participants with a work and educational experience related to the enhancement, protection, and conservation of natural resources in the state.

(2) The program head is the executive director appointed by the governor upon the recommendation of the commissioner.

Section 3. **Powers and duties of executive director.** The executive director of the youth conservation corps, in cooperation with the commissioner, shall:

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(1) adopt rules for the recruitment and employment of corpsmembers, corpsmember leaders, and supervisors for the youth conservation corps program;

(2) establish residential and nonresidential centers throughout the state to accomplish the missions and objectives of the program. At least one supervisor shall oversee each residential and nonresidential center.

(3) establish work projects providing meaningful work and educational experiences in the enhancement, protection, conservation, and management of natural resources and recreational areas in the state;

(4) adopt by rule a corpsmember code of conduct and a corpsmember grievance procedure;

(5) establish an application procedure and enter into agreements for furnishing of the corps' services to any federal, regional, state, or local public agency for the performance of public service conservation work, provided the agency reimburses the program for any actual expenses incurred in undertaking a project for the agency;

(6) apply for and accept grants or contributions from any public or private source for the operation of the program; and

(7) report biennially on December 1 to the governor on the corps' activities, including the cost-effectiveness of the projects completed.

Section 4. **Work projects.** (1) When establishing work projects as provided in [section 3], the executive director shall give preference to those projects that:

(a) provide long-term benefits to the public;

(b) provide productive work experience to corpsmembers and corpsmember leaders;

(c) are labor-intensive; and

(d) may be completed within a reasonable period of time.

(2) Work projects may include but are not limited to:

(a) forestry and nursery operations;

(b) rangeland conservation, rehabilitation, and improvement;

(c) endangered species and other wildlife habitat conservation, rehabilitation, and improvement;

(d) historical and cultural site preservation and maintenance;

(e) recreational area development, maintenance, improvement, and beautification;

(f) road and trail maintenance and improvement;

(g) soil conservation work, including erosion control;

(h) stream and lake improvement and pollution control;

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(i) fish culture and habitat maintenance and improvement;

(j) insect, disease, rodent, and other pestilence control;

(k) improvement of abandoned railroad beds and rights-of-way;

(l) land reclamation and improvement, including strip-mined lands, public landscape work, and tree planting programs;

(m) energy conservation projects, including assistance in the performance of energy efficiency audits and renewable resource enhancement;

(n) emergency assistance in times of natural or other disasters; and

(o) cleanup of litter and other debris in public recreation areas, fishing access sites, and campsites.

(3) A work project must begin no later than June 10 and conclude no later than August 31 of the same year.

Section 5. **Protection of regular employees.** A work project established under [section 3] may not:

(1) be used to reduce the number of regular hours, wages, or employment benefits of or displace an individual who is employed, either directly or under a contract with a private contractor, by the employing agency;

(2) result in the replacement of a regular employee who is in a layoff status and who customarily occupies the same or a substantially equivalent job within the employing agency;

(3) impair an existing contract for services.

Section 6. **Grievance procedure.** An individual, labor organization, or business claiming to be aggrieved by a violation of [section 5] may file a complaint with the department. The department shall establish a grievance procedure for hearing such grievances that is substantially similar to the procedure established under the federal Job Training Partnership Act, 29 U.S.C. 1554.

Section 7. **Eligibility for employment in program.** (1) To be eligible for employment as a corpsmember in the youth conservation corps program, a person must be:

(a) a citizen of the state as defined in 1-1-402;

(b) unemployed; and

(c) not less than 15 or more than 21 years of age.

(2) To be eligible for employment as a corpsmember leader, a person must be:

(a) a citizen of the state as defined in 1-1-402;

(b) unemployed; and

(c) not less than 18 years of age.

(3) To the extent practicable, the program shall consist of equal numbers of male and female corpsmembers.

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(4) The age requirements contained in subsections (1) and (2) constitute a bona fide occupational qualification for purposes of Title 49, chapters 2 and 3.

Section 8. **Term of service — wages — exemption from retirement system.** (1) A corpsmember or corpsmember leader shall by written agreement serve in the program for a period of not less than 10 weeks. A corpsmember or corpsmember leader may serve in the program for a maximum of one season.

(2) A corpsmember is entitled to receive the federal minimum hourly wage. A corpsmember leader is entitled to receive up to 15% more than the federal minimum hourly wage.

(3) Corpsmembers and corpsmember leaders are exempt from participation in the public employees' retirement system under Title 19, chapter 3.

Section 9. **Education and training required.** Each corpsmember or corpsmember leader participating in a work project shall devote a minimum of one-fourth of his worktime to education and training. This may include attendance at classes conducted by vocational-technical centers or other educational institutions.

Section 10. **Union concurrence and consultation.** Prior to commencement of a work project, the employing agency:

(1) shall consult with appropriate labor organizations representing the same occupation in the geographical area in the planning, design, and content of the work project with respect to job descriptions, training standards and arrangements, safety requirements, and protection of all current employees in the public and private sector; and

(2) must, for jobs under the project that are covered by a collective bargaining agreement, receive written concurrence from the appropriate labor organization.

Section 11. **Appropriation.** There is appropriated $2 from the general fund to the department of labor and industry $1 for fiscal year 1984 and $1 for fiscal year 1985, for the purpose of administering the youth conservation corps program. The department may not expend these funds unless the American Conservation Corps Act of 1983 (H.R. 999), or another act substantially similar to that act, passes congress. If such an act does not pass congress in fiscal year 1984, the funds appropriated for the youth conservation corps program for fiscal year 1984 revert to the general fund. If such an act does not pass congress in fiscal year 1985, the funds appropriated for the youth conservation corps program for fiscal year 1985 revert to the general fund.

Section 12. **Appointment of initial director.** The governor shall appoint the first director under [this act] within 30 days of the passage of the American Conservation Corps Act of 1983 (H.R. 999), or another act of congress that is substantially similar to that act, provided that a state match of at least $25,000 per year is secured from private donations for the purpose of administering the youth conservation corps program.

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Section 13. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. **Termination date.** This act terminates July 1, 1989.

Approved April 27, 1983.

CHAPTER NO. 653

AN ACT REQUIRING IDENTIFICATION OF AND ACQUISITION OF RAILROAD RIGHTS-OF-WAY THAT MAY BE ABANDONED; APPROPRIATING FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines.

Section 2. **Authorization.** The department of commerce:

(1) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(2) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsection (1);

(3) may negotiate for and acquire the railroad rights-of-way and attendant facilities identified pursuant to subsection (1) and hold all such acquired lands in trust for transportation purposes; and

(4) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to such local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (1).

Section 3. **Report to legislature.** The department of commerce may research the feasibility and desirability of state acquisition of abandoned railroad rights-of-way and shall submit to the 49th legislature a plan for and the estimated cost of acquisition of those identified abandoned railroad rights-of-way for which acquisition is found to be feasible and desirable.

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Section 4. **Appropriation.** There is appropriated to the department of commerce $64,682 from the general fund for the biennium ending June 30, 1985, for the purposes provided in section 2.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

CHAPTER NO. 654

AN ACT ESTABLISHING AN ACCOUNT TO RECEIVE A PORTION OF THE PROCEEDS OF LONG-RANGE BUILDING PROGRAM BONDS TO PROVIDE LOANS FOR THE SPONSOR'S SHARE OF AIRPORT IMPROVEMENT PROJECTS; AMENDING SECTION 67-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-1-301, MCA, is amended to read:

"67-1-301. Money — receipt and disbursement. (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, shall be paid out of the following revenues:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all moneys received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All such moneys shall be deposited in the state treasury to the credit of the department.

(3) There shall be deposited in the earmarked revenue fund to the credit of the department of administration, to be used, upon recommendation of the department of commerce, to provide loans to local and state government agencies for airport improvement projects in amounts not to exceed the required sponsor's share of projects authorized by the United States government for funding from the federal Airport and Airway Improvement Act of 1982:

(a) a portion, as provided in [House Bill 900], of the proceeds received from the sale of long-range building program bonds upon the authorization and sale of the bonds by the state and notwithstanding the provisions of Title 17, chapter 7, part 2; and

(b) all repayments of loans, including interest, made pursuant to subsections (3) and (4).

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(4) All loans must:

(a) bear an interest rate that fully retires the long-range building bonds issued under the authorization provided by the 48th legislature;

(b) mature not later than such bonds; and

(c) include reimbursement of administrative costs as required by subsection (5).

(5) An amount equal to 1% of the loans provided under subsection (3) may be allocated from the earmarked revenue fund for administrative purposes.

(6) There shall be deposited in the earmarked revenue fund to the credit of the department the proceeds of 1 cent per gallon out of the amount per gallon of gasoline license tax imposed by the laws of this state upon purchases of gasoline used for the operation of aircraft. Moneys so deposited shall be spent by the department for the sole purpose of carrying out its functions pertaining to aeronautics.

(7) No part of the 1 cent per gallon of gasoline license tax imposed by the laws of this state on gasoline purchased and used for the operation of airplanes or aircraft may be refunded."

Section 2. **Effective date — termination date.** This act is effective on passage and approval. This act terminates on June 30, 1985, except that a loan made prior to June 30, 1985, is subject to the provisions of this act notwithstanding the duration of such loan.

Approved April 27, 1983.

CHAPTER NO. 655

AN ACT EXPANDING THE PROHIBITIONS AGAINST POLITICAL COERCION OF PUBLIC EMPLOYEES AND POLITICAL ACTIVITIES OF PUBLIC EMPLOYEES WHILE ON THE JOB; AMENDING SECTION 13-35-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-226, MCA, is amended to read:

"13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying his employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises (express or implied) calculated or intended to influence the political opinions or actions of the employees. It is unlawful for an employer to exhibit in a place where his workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that in case any particular ticket or political party, organization, or candidate is elected, work in his place or establishment will cease, in whole or in part

or will be continued or increased; his place or establishment will be closed; the salaries or wages of his workers or employees will be reduced or increased; or other threats or promises (express or implied) intended or calculated to influence the political opinions or actions of his workers or employees. This section shall apply to corporations, individuals, and public officers and employees.

(2) No person may attempt to coerce, command, or require a public employee to *support* or *oppose* any political committee, the nomination or election of any person to public office, *or the passage of a ballot issue.*

(3) No public employee may solicit *support for* or *opposition to* any political committee, the nomination or election of any person to public office, *or the passage of a ballot issue* while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed $1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense."

Approved April 27, 1983.

CHAPTER NO. 656

AN ACT INCREASING SALARIES FOR ELECTED STATE OFFICIALS, SUPREME COURT JUSTICES, DISTRICT JUDGES, THE COMMISSIONER OF POLITICAL PRACTICES, AND THE CHAIRMAN AND MEMBERS OF THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 2-16-405, 3-5-211, 13-37-106, AND 15-2-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-405, MCA, is amended to read:

"2-16-405. Salaries of certain elected state officials. The salaries paid to certain elected officials of the state of Montana for fiscal year *1984* and following years are:

	Fiscal Year *1984*	Following June 30, *1984*
Governor	*$47,963*	*$48,923*
Lieutenant governor	*$34,344*	*$35,031*
Chief justice of the supreme court	*$49,168*	*$50,151*
Justices of the supreme court, each	*$47,963*	*$48,923*
Attorney general	*$43,745*	*$44,620*
State auditor	*$31,692*	*$32,326*
Superintendent of public instruction	*$37,719*	*$38,473*

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Public service commission chairman	*$35,544*	*$36,255*
Public service commissioners, *other than chairman*	*$34,344*	*$35,031*
Secretary of state	*$31,692*	*$32,326*
Clerk of the supreme court	*$30,789*	*$31,404*"

Section 2. Section 3-5-211, MCA, is amended to read:

"**3-5-211. Salaries and expenses of district judges.** (1) The annual salary of each district judge is as follows:

(a) for the fiscal year beginning July 1, *1983*, and ending June 30, *1984*, *$46,758*;

(b) after June 30, *1984*, *$47,693*.

(2) Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."

Section 3. Section 13-37-106, MCA, is amended to read:

"**13-37-106. Salary.** (1) The commissioner of political practices is entitled to receive a salary of *$26,269* in fiscal year *1984* and *$26,794* after June 30, *1984*.

(2) The salary commission must review the commissioner's salary and may recommend salary increases to the legislature."

Section 4. Section 15-2-102, MCA, is amended to read:

"**15-2-102. Qualification and compensation.** (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) The member designated chairman as provided for in 15-2-103 shall receive a salary of *$26,003* in fiscal *1984* and *$26,523* in fiscal *1985 and thereafter*. The remaining state tax appeal board members shall be paid a salary of *$25,305* in fiscal *1984* and *$25,811* in fiscal *1985 and thereafter*. All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business.

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(3) The salary commission must review the salary for members of the board and shall recommend an appropriate salary to the legislature."

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved April 27, 1983.

CHAPTER NO. 657

AN ACT ELIMINATING THE PRORATION OF THE NEW CAR SALES TAX FOR VEHICLES ON THE STAGGERED REGISTRATION SYSTEM; CLARIFYING THE RULEMAKING AUTHORITY OF THE DEPARTMENT OF REVENUE RELATING TO VEHICLE TAXES; AMENDING SECTIONS 61-3-502 AND 61-3-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-502, MCA, is amended to read:

"61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) *Except as provided in subsection (4), the* sales tax shall be:

(a) 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 ⅛% of the list price during the second quarter of the year;

(c) ¾ of 1% during the third quarter of the year;

(d) ⅜ of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the division may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The proceeds from this tax shall be remitted to the state treasurer every 30 days for credit to the state highway account of the earmarked revenue fund.

(6) The new vehicle is subject to the light vehicle license fee, if applicable, but is not subject to any other assessment, taxation, or fee in lieu of

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tax during the calendar year in which the original application for title is made.

(7) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(8) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business."

Section 2. Section 61-3-506, MCA, is amended to read:

"61-3-506. Rules. The department of revenue shall adopt rules for the payment of property taxes *and fees in lieu of property taxes* and the department of highways shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316 and 61-3-501. The department of revenue may adopt *rules* for the proration of taxes *and fees in lieu of taxes* for the implementation and administration of 61-3-313 through 61-3-316 and 61-3-501, but shall specifically provide that new car taxes shall be for a *12-month* period."

Approved April 27, 1983.

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CHAPTER NO. 658

AN ACT TO PROVIDE FOR ANALYSIS OF THE POTENTIAL FOR A JOINT WATER DEVELOPMENT PROJECT BETWEEN MONTANA AND WYOMING ON THE CLARKS FORK OF THE YELLOWSTONE RIVER.

WHEREAS, the Clarks Fork River is an interstate tributary of the Yellowstone River in South Central Montana that flows from its headwaters in Wyoming through an agricultural basin in Carbon County, Montana, to its confluence with the Yellowstone River; and

WHEREAS, present and future agricultural, municipal, and mineral development in the Clarks Fork River basin depends on a firm supply of water, and mainstream reservoirs would help to alleviate water shortages that have occurred in recent years; and

WHEREAS, there are no cost-effective reservoir sites in the Clarks Fork River basin of Montana but several reservoir sites are presently being considered for development in the Clarks Fork River basin in the State of Wyoming; and

WHEREAS, the apportionment of water of the Clarks Fork River between the State of Montana and the State of Wyoming is governed by the Yellowstone River Compact, but the amount of water allocated to each state under the compact has never been quantified, and an effective method of compact administration has never been established; and

WHEREAS, the threat of overuse of the Clarks Fork River water by the State of Wyoming and the possible impact of overuse upon water users in Montana make it imperative that Montana delineate its rights under the terms of the Yellowstone River Compact and assess the feasibility of a joint storage project with the State of Wyoming.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Duties of department.** The department of natural resources and conservation shall, prior to January 1, 1985, collect all relevant data, build hydrologic computer simulation models, and conduct any necessary water availability studies to determine Montana's and Wyoming's allocable share of Clarks Fork River water under the terms of the Yellowstone River compact.

Section 2. **Legislative committee.** There is created a committee of four legislators, two selected by the speaker of the house and two selected by the president of the senate, to provide advice to the department of natural resources and conservation in carrying out its duties under section 1 and, in close cooperation with representatives of the department, to conduct discussions with state of Wyoming officials regarding the feasibility of one or more joint reservoir projects in the state of Wyoming that would mutually satisfy the present and future needs of both states. The department shall pay the expenses of the committee members in accordance with

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5-2-302. The committee and the department, together with representatives of the state of Wyoming, shall, if feasible, formulate a plan to provide a basis for a joint state appraisal study.

Approved April 27, 1983.

CHAPTER NO. 659

AN ACT TO EXTEND THE LAWS RELATING TO THE OPERATION OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL TO ROADS AND PARKING AREAS ADAPTED FOR PUBLIC TRAVEL AND USED BY THE PUBLIC; AMENDING SECTIONS 61-8-101 AND 61-8-401 THROUGH 61-8-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application — exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401*(1)(b), (1)(c), and (2)* apply upon highways and elsewhere throughout the state;

(c) the provisions of 61-8-401, except subsections (1)(b), (1)(c), and (2) thereof, and 61-8-402 through 61-8-405 apply upon all ways of this state open to the public. For the purposes of this section and 61-8-401 through 61-8-404, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state *or on ways of this state open to the public*, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 2. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714(1) for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a motor vehicle upon *ways* of this state *open to the public*;

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(b) a narcotic drug to drive or be in actual physical control of a motor vehicle within this state; or

(c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) In any criminal prosecution for a violation of subsection (1) of this section relating to driving a vehicle while under the influence of alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at that time in excess of 0.05% but less than 0.10% by weight of alcohol in the defendant's blood, that fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.

(5) Each municipality in this state is given authority to enact 61-8-714 and subsections (1) through (4) of this section with the word "state" in subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."

Section 3. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon *ways* of this state *open to the public* shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon *ways of this state open to* the public while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

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(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the division, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon *ways of this state open to* the public while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state for a period of 60 days. Like refusal by a nonresident shall be subject to suspension by the division in like manner. All such suspensions are subject to review as hereinafter provided."

Section 4. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon *ways of this state open to* the public while under the influence of alcohol, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Section 5. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible. (1) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon *ways of this state open to* the public while under the influence of alcohol.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol."

Approved April 27, 1983.

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CHAPTER NO. 660

AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO SET FEES FOR SERVICES PERFORMED BY ITS LABORATORY; PROVIDING FOR DEPOSIT OF THE FEES IN AN EARMARKED REVENUE FUND; AMENDING SECTION 50-1-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1-202, MCA, is amended to read:

"**50-1-202. General powers and duties.** The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop and administer a program to protect the health of mothers and children;

(10) conduct health education programs;

(11) provide consultation to school and local community health nurses in the performance of their duties;

(12) consult with the superintendent of public instruction on health measures for schools;

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(13) develop and administer a program for services to handicapped children including diagnosis, medical, surgical, and corrective treatment, and after-care and related services;

(14) provide consultation to local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) adopt rules imposing fees for the tests and services performed by the laboratory of the department, *except fees relating to water analysis, which are imposed by the board pursuant to 75-6-103(2)(b). Fees, established on an annual basis, should reflect the actual costs of the tests or services provided. The* department may *not* establish *fees exceeding* the costs incurred in performing tests and services. All fees shall be deposited in the *special revenue* fund *for the use of the department in performing tests and services.*

(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(20) adopt and enforce rules regarding the transportation of dead human bodies."

Section 2. **Effective date.** This act is effective July 1, 1983.

Approved April 27, 1983.

CHAPTER NO. 661

AN ACT REDUCING THE EMPLOYER CONTRIBUTION RATE TO THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM AND THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; INCREASING THE STATE CONTRIBUTION TO EACH RETIREMENT SYSTEM BY AN AMOUNT EQUAL TO THE REDUCTION IN THE EMPLOYER CONTRIBUTION RATE; FUNDING THE CITIES' UNFUNDED LIABILITIES UNDER BOTH PLANS THROUGH INSURANCE PREMIUM TAXES; CLARIFYING THE PROHIBITION AGAINST A FIREFIGHTER PARTICIPATING IN OTHER RETIREMENT PLANS; AMENDING SECTIONS 19-9-503, 19-9-702, 19-9-703, 19-13-302, 19-13-503, 19-13-604, AND 19-13-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-503, MCA, is amended to read:

"19-9-503. Unfunded liabilities. (1) It is found and declared by the legislature that many cities operating under prior plans have excess

and unfunded liabilities under such prior plans, which liabilities cannot be amortized by the percentage contributions set forth in 19-9-702 and 19-9-703.

(2) The administrator shall, on or before October 1, 1977, determine the excess and unfunded liability of each city which participates in the plan created by this chapter. The determination of the administrator, in the absence of fraud, abuse of discretion, or arithmetic error, is final and binding on each city. Each city found by the administrator to have an excess and unfunded liability under a prior plan which as of July 1, 1977, is not funded by sums on deposit or funds available for deposit with the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by the administrator. If any city and the administrator are unable by January 1, 1978, to negotiate and reduce to writing the terms of an agreement satisfactory to both of them for the city to amortize its excess liability, the administrator shall require such city to pay an additional sum to amortize its excess liability on July 1, 1977, over a period of not more than 40 years.

(3) Each city found by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for any such excess payments.

(4) The excess unfunded liabiliity for each city shall be revaluated by the administrator on July 1, 1980, as part of the normal actuarial valuations required in 19-9-504 reflecting the change in the contribution rates made in 19-9-601, 19-9-702, and 19-9-703, as amended by Chapter 375, Laws of 1979, and each city's funding position will be changed using the procedures of 19-9-107. The resulting report will be made available to the cities no later than October 1, 1980.

(5) If a majority of the cities participating in the municipal police officers' retirement system do not agree with the results of the revaluation outlined in subsection (4), they may, by mutual agreement of the cities, select a qualified actuary, as defined in 19-9-504, to perform a second actuarial valuation as of July 1, 1980, with the conclusions of the second actuarial valuation to replace the actuarial valuation discussed in subsection (4). The cost of the second actuarial valuation shall be paid by all cities participating in the system in proportion to their active membership in the system as of July 1, 1980.

(6) The time and method of settlement on the unfunded liability will be as agreed on by the administrator and the city. The minimum allowable payment must be equal to or greater than the interest due at the interest rate used in the actuarial study for the unfunded balance.

(7) If a city is required to make payments on or after July 1, 1985, to amortize its excess and unfunded liability under a prior plan, these payments must be made by the state auditor from the premium taxes on insurance risks enumerated in 19-11-512."

Section 2. Section 19-9-702, MCA, is amended to read:

"19-9-702. State contribution. The state of Montana shall make its contributions through the state auditor out of the premium tax on motor

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vehicle property and casualty insurance policies. Such payments shall be made annually after the end of each fiscal year but no later than September 1 from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor by April 1 of each year of the annual compensation paid to all active members during the preceding year. *Before July 1, 1985,* the state's contribution shall be 14.04% of such compensation *and 15.06% on and after July 1, 1985.*"

Section 3. Section 19-9-703, MCA, is amended to read:

"**19-9-703. Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of moneys available to the city for such purpose. *Before July 1, 1985, the* employer's contribution shall be 14.04% of the total monthly compensation paid to all active members during the preceding month, *13.02% on and after July 1, 1985,* and shall be payable monthly to the administrator."

Section 4. Section 19-13-302, MCA, is amended to read:

"**19-13-302. Ineligibility for other retirement plans.** No active member is eligible to be covered under any other mandatory retirement plan to which an employer is required to contribute on his behalf while he is eligible to be covered by this plan."

Section 5. Section 19-13-503, MCA, is amended to read:

"**19-13-503. Unfunded liabilities.** (1) The legislature finds and declares that many cities operating under prior plans have excess and unfunded liabilities, and the liabilities cannot be amortized by the percentage contributions set forth in this chapter.

(2) The administrator shall, on or before October 1, *1986,* determine the excess and unfunded liability of each city participating in the plan created by this chapter. *For each* city determined by the administrator to have an excess and unfunded liability under a prior plan that, as of July 1, *1986,* is not funded by sums on deposit or funds available for deposit with the administrator, *the state auditor* shall pay an additional sum over a period of time *from the premium taxes on insurance risks enumerated in 19-11-512* to amortize *each city's* excess liability.

(3) *If* the administrator *determines that the state auditor is* paying an amount in excess of the amount necessary to amortize *each city's* liabilities under the prior plan and under this chapter, *the administrator shall* credit the accounts of the administrator for the excess payments.

(4) For each city with an unfunded liability, any portion of the member, *the* employer, and state contributions that exceeds the amount necessary to maintain the current level of unfunded liability must be applied to the reduction of the unfunded liability."

Section 6. Section 19-13-604, MCA, is amended to read:

"**19-13-604. State contribution.** The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-11-512. These payments shall be made annually to

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the administrator after the end of each fiscal year but no later than September 1 from the gross premium taxes after deduction for cancellations and returned premiums. The administrator shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year, and effective July 1, 1981, the state's contribution is 12% of this compensation. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, *and to 22.98% effective July 1, 1985.* As soon as practicable after receipt of the state contribution, the administrator shall deposit it with the state treasurer."

Section 7. Section 19-13-605, MCA, is amended to read:

"19-13-605. Employer contribution. Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available to the city for this purpose. Effective July 1, 1981, the employer's contribution is 12% of the total monthly compensation paid to all active members during the preceding month. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, *and shall decrease to 13.02% effective July 1, 1985.* All contributions are payable monthly to the administrator who shall, as soon as practicable after their receipt, deposit them with the state treasurer."

Section 8. **Effective date.** This act is effective July 1, 1983.

Approved April 27, 1983.

CHAPTER NO. 662

AN ACT TO AUTHORIZE COUNTIES, CITIES, AND TOWNS TO ENACT ORDINANCES DEFINING AREAS WHERE ALCOHOLIC BEVERAGES MAY OR MAY NOT BE SOLD THAT SUPPLANT THE PROHIBITION AGAINST THE ISSUANCE OF A RETAIL ALCOHOLIC BEVERAGE LICENSE TO A BUSINESS LOCATED WITHIN 600 FEET OF A SCHOOL OR CHURCH; AMENDING SECTIONS 16-3-306 AND 16-3-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-306, MCA, is amended to read:

"16-3-306. Proximity to churches and schools restricted. (1) Except as provided in subsections (2) *through (4)*, no retail license may be issued pursuant to this code to any business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority.

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(2) However, the department may renew a license for any establishment located in violation of this section if the licensee does not relocate his entrances any closer than the existing entrances and if the establishment:

(a) was located on the site before the place of worship or school opened; or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both in the original package for off-premises consumption.

(4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has supplanted the provisions of subsection (1) as provided in 16-3-309."

Section 2. Section 16-3-309, MCA, is amended to read:

"16-3-309. Sales prohibited by ordinance. (1) *An* incorporated *city* may enact *an ordinance* defining certain areas in *its incorporated limits* where alcoholic beverages may or may not be sold.

(2) A county may enact an ordinance or resolution defining certain areas in the county, not within the incorporated limits of a city, where alcoholic beverages may or may not be sold.

(3) In enacting such an ordinance or resolution, the county or city may provide that the provisions of 16-3-306(1) do not apply within the jurisdictional area of the ordinance or resolution. If a county or city has supplanted the provisions of 16-3-306(1), upon request of the department the governing body of the county or city must certify to the department whether or not the person or individual identified in the request may lawfully sell alcoholic beverages under the terms of the ordinance or resolution. The department is bound by the determination set forth in the certification.

(4) No *county or* incorporated city may by ordinance restrict the number of licenses that the department may issue."

Approved April 27, 1983.

CHAPTER NO. 663

AN ACT PROVIDING AN AD HOC COST-OF-LIVING INCREASE IN SERVICE AND DISABILITY RETIREMENT ALLOWANCES AND SURVIVORSHIP ALLOWANCES FOR MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THEIR BENEFICIARIES; PROVIDING FUNDING FOR THE BENEFIT INCREASE THROUGH EMPLOYER CONTRIBUTIONS; AMENDING SECTION 19-3-801, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Cost-of-living increase.** Effective July 1, 1983, each monthly service or disability retirement allowance or survivorship allowance payable to a member of the public employees' retirement system or his beneficiary must be increased as follows:

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(1) $1 for each year of creditable service, up to a maximum of $30, for a member retired before July 1, 1981; or

(2) 50 cents for each year of creditable service, up to a maximum of $15, for a member retired on or after July 1, 1981, but before January 1, 1983.

Section 2. Section 19-3-801, MCA, is amended to read:

"19-3-801. Employer contribution rates — actuarial determination. (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall be *6.417%* from *July 1, 1983*, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons."

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 27, 1983.

CHAPTER NO. 664

AN ACT CREATING, WITHIN THE GOVERNOR'S OFFICE, AN OFFICE OF AGING AND REQUIRING THE GOVERNOR TO APPOINT AN ADVISORY COUNCIL ON AGING AND A COORDINATOR ON AGING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Office of aging.** (1) There is an office of aging, headed by a coordinator of aging. The office is in the governor's office.

(2) The governor shall appoint an advisory council on aging. The council is composed of 11 members, a majority of whom must be 60 years of age or older. Members shall serve for 3-year terms. Vacancies must be

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filled by appointment for the unexpired term. The council is allocated to the governor's office for administrative purposes only.

(3) The coordinator of aging must be appointed by the governor after consultation with the advisory council and shall serve at the pleasure of the governor.

(4) The advisory council on aging shall act as the advisory board to the coordinator on aging.

Section 2. **Duties and assistance.** (1) The coordinator of aging shall, with the advice of the advisory council on aging, assist the governor in planning, coordination, and operation of programs within state government that affect senior citizens of the state.

(2) The coordinator shall meet with senior citizens and the general public to gather information on the needs of senior citizens and the effectiveness of state programs in meeting those needs.

(3) The coordinator shall advise the governor as to ways to improve the effectiveness of programs that affect senior citizens.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

CHAPTER NO. 665

AN ACT TO GENERALLY REVISE THE LAW RELATING TO STATEMENTS OF ECONOMIC IMPACT OF PROPOSED ADMINISTRATIVE RULEMAKING; AMENDING SECTION 2-4-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-405, MCA, is amended to read:

"**2-4-405. Economic impact statement.** (1) Upon *written* request of the administrative code committee *based upon the affirmative request of at least five members of the committee at an open meeting*, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. *As an alternative, the administrative code committee may, by contract, prepare such an estimate. Except to the extent that the request expressly waives any one or more of the following, the requested* statement must include *and the statement prepared by the committee may include*:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

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(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) *A request to an agency for a statement or a decision to contract for the preparation of a statement must be made by the committee prior to the final agency action on the rule.* The statement must be filed with the *administrative code committee within 3 months of the committee's request or decision. The committee may withdraw its request or decision for an economic impact statement at any time.*

(3) *Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice indicating where a copy of the statement may be obtained must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee if the statement is prepared under contract by the committee and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.*

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section."

Section 2. An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in 2-4-405 satisfies the provisions of 2-4-405.

Approved April 28, 1983.

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CHAPTER NO. 666

AN ACT TO CLARIFY THE INFORMATION REQUIRED TO BE SUBMITTED TO THE BUDGET DIRECTOR AND THE LEGISLATIVE FISCAL ANALYST FOR THE PREPARATION OF AGENCY BUDGET ESTIMATES; PROVIDING A DATE BY WHICH THE BUDGET OFFICE WILL PREPARE AN AGENCY REQUEST; AND SPECIFICALLY INCLUDING THE UNIVERSITY SYSTEM UNDER THE BUDGET REQUIREMENTS; AMENDING SECTIONS 17-7-111 AND 17-7-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-111, MCA, is amended to read:

"17-7-111. Agency program budgets — form distribution and contents. *(1)* In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper *forms* necessary for the preparation of budget estimates. These *forms* shall be prescribed by the budget director to procure *the* information *required by subsection (2).*

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary for current level expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained therein by fund and, where applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented shall include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency;

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(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and agency's recommendations for the ensuing biennium, by disbursement category;

(e) any other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director must also prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401."

Section 2. Section 17-7-112, MCA, is amended to read:

"**17-7-112. Submission deadline.** (1) It shall be the duty of each department, agency, and office, *including the Montana university system,* to submit *the* information *required under 17-7-111 to* the budget director on or before September 1 in the even year preceding the convening of the legislature.

(2) Between August 15 and September 30 in the year preceding the convening of the legislature, the director must submit each state agency's budget request required under 17-7-111(2) to the legislative fiscal analyst. The transfer of budget information shall be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information during the month of September and which allows each office to maintain a reasonable staff workflow.

(3) If any department, institution, *university unit,* or agency shall fail to present such information within the time herein specified, the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare *and submit to the legislative fiscal analyst and the governor by October 30* a budget request on behalf of such department, institution, *university unit,* or agency, based upon his studies of the operations, plans, and needs thereof.

(4) The proposed pay plan schedule required by 17-7-111(3) must be submitted to the legislative fiscal analyst no later than November 15 in the year preceding the convening of the legislature."

Approved April 28, 1983.

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CHAPTER NO. 667

AN ACT TO COUPLE MONTANA'S DEFINITION OF "SMALL BUSINESS CORPORATION" TO THE FEDERAL DEFINITION FOR PURPOSES OF THE CORPORATE LICENSE TAX; AMENDING SECTIONS 15-31-201 AND 15-31-202, MCA; REPEALING SECTIONS 15-31-205 THROUGH 15-31-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-201, MCA, is amended to read:

"15-31-201. Definitions. (1) For purposes of this part, the term "small business corporation" means a corporation doing business in Montana and which *has made a valid election under Subchapter S of Chapter 1 of the Internal Revenue Code of 1954 and thereafter has filed a copy thereof with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective.*

(2) For purposes of this part, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under *Subchapter S* in effect for such taxable year *and has filed a copy of such election with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective.*"

Section 2. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation. (1) *A* small business corporation may elect not to be subject to the taxes imposed by this chapter.

(2) If a small business corporation makes an election under subsection (1), then:

(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation is not subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such corporation; and

(b) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this part apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such shareholder.

(3) An election under subsection (1) must be made in accordance with rules prescribed by the department of revenue.

(4) This election is not effective unless the corporate net income or loss of such electing corporation is included in the stockholders' adjusted gross income as defined in 15-30-111.

(5) Every electing corporation is required to pay the minimum fee of $10 required by 15-31-204."

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Section 3. **Failure to file — disqualification.** If a corporation does not file a copy of the federal Subchapter S election on or before the 15th day of the third month of the taxable year, the corporation shall not qualify as a small business corporation under this part for the taxable year.

Section 4. **Termination and revocation.** If the election under the provisions of Subchapter S is either terminated or revoked for federal purposes, the corporation must notify the department within 30 days of such termination or revocation. The department may terminate an election at any time if it discovers the corporation does not qualify as a small business corporation as provided for under the provisions of Subchapter S of the Internal Revenue Code of 1954.

Section 5. **Repealer.** Sections 15-31-205 through 15-31-207, MCA, are repealed.

Section 6. **Effective and applicability dates.** This act is effective on passage and approval and applies to taxable years beginning after December 31, 1982.

Approved April 28, 1983.

CHAPTER NO. 668

AN ACT TO PROVIDE TRAINING FOR FAMILY PRACTICE RESIDENT PHYSICIANS; LIMITING USE OF FUNDS; APPROPRIATING FUNDS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 4] may be cited as the "Family Practice Training Act of 1983".

Section 2. **Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Family practice" means comprehensive medical care with particular emphasis on the family unit in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(2) "Residency training" means a community-based family practice program to train family practice resident physicians sponsored by one or more community hospitals and physicians in Montana for inpatient and outpatient training.

(3) "Resident physician" means any physician in advanced medical specialty training.

Section 3. **Montana family practice training program.** (1) There is created a Montana family practice training program to train resident physicians in family practice.

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(2) The program is under the authority of the department, and the department shall contract with a nonprofit corporation organized under the laws of Montana or certified to do business in Montana to coordinate the training of family practice resident physicians. The officers and directors of the corporation must be qualified by education, experience, and interest to administer and oversee family practice resident physician training activity.

Section 4. **Funding limitations.** (1) Money appropriated for residency training is in addition to any other money appropriated for medical educational programs and may not supplant funds for existing medical educational programs.

(2) No funds appropriated by the legislature to fund residency training may subsidize the cost incurred by patients.

Section 5. **Appropriation.** There is appropriated from the general fund $65,000 for the fiscal year ending June 30, 1984, and $6,000 for the fiscal year ending June 30, 1985, to the Department of Health and Environmental Sciences for the biennium ending June 30, 1985, for personal services and operating expenses to provide support for family practice residency training.

Section 6. **Codification instruction.** Sections 1 through 4 are intended to be codified as an integral part of Title 50, chapter 5, parts 1 through 4, and the provisions of Title 50, chapter 5, parts 1 through 4, apply to sections 1 through 4.

Section 7. **Effective date.** This act is effective July 1, 1983.

Approved April 28, 1983.

CHAPTER NO. 669

AN ACT FOR THE SIMPLIFICATION OF BALLOTS; PROVIDING THAT LOCAL ELECTION ADMINISTRATORS MAY REQUEST THAT ONLY THE BALLOT ISSUE NUMBER, THE FISCAL STATEMENT, AND THE FOR AND AGAINST STATEMENTS APPEAR ON THE BALLOT AND THAT ALL OTHER INFORMATION BE DISTRIBUTED TO ELECTORS AS THEY ENTER THE POLLING PLACE; AMENDING SECTION 13-27-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-501, MCA, is amended to read:

"13-27-501. Secretary of state to certify ballot form. *(1)* The secretary of state shall furnish to the official of each county responsible for preparation and printing of the ballots, at the same time as he certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot.

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(2) Except as provided in [section 2], the secretary of state shall list for each issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the attorney general's explanatory statement if applicable;

(e) the fiscal statement if applicable; and

(f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot.

(3) When required to do so, the secretary of state shall use for each ballot issue the title of the legislative act or legislative constitutional proposal or the title provided by the attorney general or district court. Following the number of the ballot issue, the secretary of state, *when required to do so,* shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;

(b) an amendment to the constitution proposed by the legislature;

(c) an act of the legislature referred by referendum petition; or

(d) a law or constitutional amendment proposed by initiative petition."

Section 2. **Abbreviated form of the certified ballot.** The county election administrator may, at least 14 days prior to the deadline for ballot certification by the secretary of state, request in writing that he be furnished an abbreviated form of the certified ballot. The secretary of state shall furnish to all counties from which he has received such a request a certified ballot containing only the information in subsections (2)(a), (2)(e), and (2)(f) of 13-27-501. If the county election administrator requests that the abbreviated ballot be prepared, copies of the information contained in subsections (2)(a) through (2)(f) must be distributed to each elector by an election judge as the elector enters the polling place.

Approved April 29, 1983.

CHAPTER NO. 670

AN ACT TO REQUIRE A PUBLIC HEARING PRIOR TO THE SALE OR TRANSFER OF CERTAIN FEDERAL LAND.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Sale or transfer of federal land — when hearing required.** (1) Prior to the sale or transfer of land within the boundaries of the state of Montana that is owned or controlled by an agency of the United States government, the commissioner of state lands must determine

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if there would be any impact on the management of state lands, on agricultural, wildlife, or recreational resources of the state, or on the cost of government services provided by the state, by any school district, or by any county, city, or other local government unit by reason of such sale or transfer.

(2) If the commissioner determines there would be an adverse impact under subsection (1) and that no hearing or public meeting has been or will be conducted by a federal agency affording the opportunity for expression of public opinion regarding the proposed sale or transfer, and that further public input would be desirable, he shall hold a public hearing prior to the occurrence of such sale or transfer in order to provide opportunity for the expression of public sentiment regarding the proposed disposition of federal land.

(3) If a hearing will be conducted by a federal agency on the proposed sale or transfer of federal land within the state, the commissioner shall require the attendance of a representative of the department of state lands for the purposes of fulfilling the requirements of [section 3].

(4) The sale or transfer of easements by an agency of the United States government and the transfer of land by the United States to the state of Montana in satisfaction of land owed to the state pursuant to The Enabling Act are exempt from the operation of this section.

Section 2. **Hearing requirements.** Any hearing required under [section 1] must be held in a county in which the land involved in the proposed sale or transfer is located and must be held according to procedural rules which shall be adopted by the commissioner in accordance with the Montana Administrative Procedure Act.

Section 3. **Action by commissioner.** The commissioner shall take such action as he may consider appropriate, consistent with federal jurisdiction, to address concerns and issues raised during the hearing. Such action may include but is not limited to:

(1) the filing of formal requests for action by the appropriate federal agency that would alleviate concerns expressed at the hearing;

(2) the filing of a formal protest to the proposed sale or transfer.

Section 4. **Codification instruction.** Sections 1 through 3 are intended to be codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77 apply to sections 1 through 3.

Approved April 29, 1983.

CHAPTER NO. 671

AN ACT TO REDUCE THE OIL SEVERANCE TAX TO 5 PERCENT BEGINNING APRIL 1, 1985; AMENDING SECTION 15-36-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-101, MCA, is amended to read:

"15-36-101. Definitions and rate of tax. (1) Every person engaging in or carrying on the business of producing petroleum, other mineral

or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced sufficient in quantity to justify the marketing of the same must, except as provided in 15-36-121, each year when engaged in or carrying on any such business in this state pay to the department of revenue for the exclusive use and benefit of the state of Montana a severance tax computed at the following rates:

(a) 5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit on or after April 1, 1981, and on or before March 31, 1983; 6% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit *on or after April 1, 1983, and on or before March 31, 1985; and 5% of the total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or unit thereafter*; but in determining the amount of such tax there shall be excluded from consideration all petroleum or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such petroleum or crude or mineral oil;

(b) 2.65% of the total gross value of natural gas produced from each lease or unit; but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such gas or petroleum or crude or mineral oil; and there shall also be excluded from consideration all gas recycled or reinjected into the ground.

(2) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil well or to work in or about any oil well or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such severance tax, nor may any work done or the drilling of any well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils or for the purpose of developing same be considered to be the engaging in or carrying on of any such business. If, in the doing of any such work, in the drilling of any oil well, or in such prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation is produced sufficient in quantity to justify the marketing of the same, such work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of such business within this state within the meaning of this section.

(3) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted

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and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the aforesaid interests that are owned by the federal, state, county, or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies to crude oil produced on or after April 1, 1983.

Approved April 29, 1983.

CHAPTER NO. 672

AN ACT INCREASING THE PER DIEM COMPENSATION FOR QUASI-JUDICIAL, RETIREMENT, AND LICENSING AND REGULATORY BOARDS FROM $25 A DAY TO $50 A DAY; AMENDING SECTIONS 2-15-124, 19-3-302, 19-4-202, 37-1-133, 85-7-1505, AND 85-7-1613, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-124, MCA, is amended to read:

"2-15-124. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed and qualified. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office

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before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid *$50* for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law."

Section 2. Section 19-3-302, MCA, is amended to read:

"19-3-302. Compensation and expenses of board members. The travel expenses of members of the board shall be as allowed in 2-18-501 through 2-18-503, as amended, and reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive, in addition to travel expenses, compensation *as provided in 2-15-1009.*"

Section 3. Section 19-4-202, MCA, is amended to read:

"19-4-202. Per diem and expenses of board members. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive *$50* per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system."

Section 4. Section 37-1-133, MCA, is amended to read:

"37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the

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department is entitled to receive *$50* per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-501, for each day in which 6 or more hours are spent on official board business. Ex officio board members may not receive compensation but shall receive travel expenses."

Section 5. Section 85-7-1505, MCA, is amended to read:

"85-7-1505. Compensation and expenses of commissioners. The commissioners, when sitting as a board or when engaged in the business of the district, are entitled to compensation *of $25 for each day they are actually and necessarily engaged in the performance of irrigation district duties* and to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503, and for their necessary expenses when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office."

Section 6. Section 85-7-1613, MCA, is amended to read:

"85-7-1613. Board of control — per diem and expenses. The members of the board of control, when sitting as a board or when engaged in the business of the board, are entitled to compensation *of $25 for each day they are actually and necessarily engaged in the performance of irrigation district duties* and to reimbursement for travel expenses as provided in 2-18-501 through 2-18-503, and for their necessary expenses."

Section 7. **Effective date.** This act is effective July 1, 1983.

Approved April 29, 1983.

CHAPTER NO. 673

AN ACT TO DISALLOW DEDUCTIONS RELATED TO EXCLUDED INTEREST INCOME FOR MONTANA CORPORATION LICENSE TAX PURPOSES; TO APPLY THE DISALLOWANCE OF DEDUCTION RETROACTIVELY TO ALL TAXABLE PERIODS DURING WHICH SUCH INCOME IS EXCLUDED FROM GROSS INCOME; PROHIBITING CONSOLIDATED RETURNS FOR FINANCIAL INSTITUTIONS UNDER THE CORPORATE LICENSE TAX; REAFFIRMING THE INCLUSION OF STATE AND LOCAL BOND INCOME IN THE DEFINITION OF NET INCOME FOR CORPORATION LICENSE TAX PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

WHEREAS, the Montana Corporation License Tax Act (Title 15, chapter 31, part 1) was intended, after the enactment of Chapter 634, Laws of 1979, to require all corporations to report and pay a tax upon all income derived from obligations of the United States or its agencies or instrumentalities as permitted by Title 31, section 742, United States Code; and

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WHEREAS, the Montana Supreme Court on September 23, 1982 (petition for rehearing denied December 6, 1982), decided in the case cited below that such income must be excluded from the measure of the subject tax; and

WHEREAS, the Legislature disagrees with the Montana Supreme Court's decision in the case of First Federal Savings and Loan Association, a Federally Chartered Association, et al., Plaintiffs and Appellants v. Department of Revenue, et al., Defendants and Respondents, Cause No. 81-528, and has filed, through its Revenue Oversight Committee, an Amicus Curiae brief in support of the position of the Department of Revenue; and

WHEREAS, the Department of Revenue is presently seeking to have the United States Supreme Court review the matter, and at this time other decisions are also being reviewed by the United States Supreme Court that might have a bearing on the issue of the taxability of such income; and

WHEREAS, in the interim uncertainty exists as to the taxability of such income and claims for refund of tax and returns of income will be made by corporations based upon the exclusion of such income; and

WHEREAS, the Legislature desires to maintain approximately the current level of revenue to state and local government; and

WHEREAS, immediate legislative action is necessary.

THEREFORE, it is the intent of the Legislature to proportionately reduce the allowable deductions to all corporations for all taxable periods for which interest income is excluded or claim for refund of tax is made upon such exclusion under claim of right under federal law.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reduction of deductions related to excluded income.** (1) A corporation, taxable under Title 15, chapter 31, part 1, that excludes interest from gross income which would be taxable except for federal law must adjust its allowable deductions for all taxable periods for which interest is excluded in the following manner:

(a) the total amount of interest excluded from gross income by federal law must be determined;

(b) the total amount of all interest income from all sources must be determined;

(c) the ratio of excluded interest income to all interest income must be determined; and

(d) the total deductions allowable under 15-31-114 must be reduced by an amount determined by multiplying the amount of deduction otherwise allowable by the ratio of excluded interest to all interest income; however, the product of this calculation may not exceed the amount of excluded interest income.

(2) Allowable deductions must be reduced with respect to all corporations that exclude interest income otherwise taxable upon returns filed for

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all taxable periods for which such exclusion is claimed and for all taxable periods for which a claim for refund is made.

Section 2. **Consolidated returns prohibited.** (1) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.

(2) In accordance with subsection (1), financial institutions are prohibited from filing consolidated returns under 15-31-141.

Section 3. **Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes.** Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the corporation license tax. Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax.

Section 4. **Codification instruction.** Sections 1 through 3 are intended to be codified as integral parts of Title 15, chapter 31, part 1.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date — applicability dates.** This act is effective on passage and approval. Sections 1 and 3 of this act apply retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently claims a refund of taxes paid based upon federal law. Section 2 of this act applies to taxable periods beginning after December 31, 1982.

Approved April 29, 1983.

CHAPTER NO. 674

AN ACT PROVIDING FOR THE CENTRAL AND LOCAL RECORDATION OF WATER RIGHT TRANSFERS; PROVIDING THAT TRANSFERS MADE WITHOUT PRIOR APPROVAL OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MUST BE APPROVED AFTER THE TRANSFER; AMENDING SECTION 85-2-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [sections 1 through 6] is to facilitate the maintenance of a reliable record of water right ownership on both the state and local levels by requiring that water right transfers be

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recorded with the county clerk and recorder and that the county clerk and recorder notify the department and the water court of each transfer recorded.

Section 2. **Definition.** As used in [sections 1 through 6], "water right" means the right to use water as documented by a claim to an existing right, a permit, or a certificate of water right.

Section 3. **Water right transfer certificate.** (1) The chief water judge and the department shall prescribe the form and content of the water right transfer certificate.

(2) The department shall provide an adequate supply of such forms to each county clerk and recorder in the state.

Section 4. **Recordation.** (1) The parties to a transfer of a water right or their agents or representatives shall record with the county clerk and recorder a water right transfer certificate.

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall note whether or not the transfer includes a transfer of water rights. If the realty transfer certificate notes a transfer of water rights, the clerk and recorder shall provide such person the form prescribed in this act for the transfer of water rights. The recording of the deed or other instrument shall not be delayed because of the transfer of the water rights.

(3) The county clerk and recorder shall cause a permanent record of the water right transfer certificate to be made.

(4) The county clerk and recorder shall send a copy of the water right transfer certificate to the department and to the office of the chief water judge.

Section 5. **Effect of recordation.** (1) Failure to comply with [sections 1 through 6] does not affect the validity or effectiveness of an instrument or deed as between the parties to it.

(2) The recordation of the water right transfer certificate with the county clerk and recorder is constructive notice of the content thereof.

Section 6. **Fee.** (1) The board of natural resources and conservation shall by rule prescribe a fee that must cover the cost to the department in processing the copy of the transfer certificate. The fee must be paid at the time of recordation of the water right transfer certificate.

(2) The county clerk and recorder shall:

(a) collect the fee required under subsection (1) and forward it to the department to be deposited in the water right appropriation account provided for in 85-2-318; and

(b) charge and collect a recording fee as provided for in 7-4-2631 for recording the document.

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Section 7. Section 85-2-403, MCA, is amended to read:

"**85-2-403. Transfer of appropriation right.** (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) Without obtaining prior approval from the department, an appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands. The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with 85-2-307. If the department then determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of 85-2-308(2) and hearings shall be held in accordance with 85-2-309.

(3) Failure to comply with the provisions of subsection (2) does not render a conveyance or reservation of a water right void, but the right may not be used until the department has approved the change. This subsection applies retroactively, within the meaning of 1-2-109, to a conveyance or reservation made after July 1, 1973."

Section 8. **Codification instruction.** Sections 1 through 6 are intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to sections 1 through 6.

Section 9. **Effective date.** Section 7 is effective on passage and approval.

Approved April 29, 1983.

CHAPTER NO. 675

AN ACT TO REVISE LIMITS OF RECOVERY IN TORT SUITS AGAINST THE STATE AND LOCAL GOVERNMENTS; AMENDING SECTION 2-9-101, MCA; REPEALING SECTION 2-9-104, MCA; PROVIDING FOR RETROACTIVE APPLICABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, on April 8, 1983, the Montana Supreme Court, in the case of Karla White v. State of Montana, Cause No. 82-170, held the limitations contained in section 2-9-104, MCA, on economic and noneconomic damages in tort actions against governmental entities to be an unconstitutional violation of the guarantee of equal protection of the laws; and

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WHEREAS, the obligations imposed upon governmental entities must be performed, even though the risks inherent in performing absolute obligations are great; and

WHEREAS, the responsibility for confining, housing, and rehabilitation of persons convicted of criminal activity; the treatment and supervision of mental patients at government institutions or under government programs; the planning, construction, and maintenance of thousands of miles of highways; the operation of municipal transportation systems and airport terminals; and the operation and maintenance of schools, playgrounds, and athletic facilities are only a few of those obligations; and

WHEREAS, prior to the adoption in 1977 of the limitations on damages declared unconstitutional, liability insurance had become increasingly expensive and unavailable to units of local government; and

WHEREAS, the amount of damages against the state requested in administrative claims, prayed for in some legal actions and estimated to be payable in other legal actions, far exceed existing loss reserves and anticipated revenues of the state's self-insurance reserve fund; and

WHEREAS, an investigation of the limitations on damages imposed by other states in legal actions against those states and comparison of these limitations show the limitations imposed by this act to be highly reasonable; and

WHEREAS, Article II, section 18, of the Montana Constitution allows the Legislature to provide by law for immunity from suit for the State and other governmental entities; and

WHEREAS, the limitations on liability and damages contained in Title 2, chapter 9, parts 1 through 3, MCA, as amended by this act, are compelled by the interests of all governmental entities in funding all governmental services or in making conscious and deliberate decisions not to fund those services.

THEREFORE, it is the intent of the Legislature to make legislative findings of necessity for those limitations on liability and damages contained in Title 2, chapter 9, parts 1 through 3, MCA, and to reinstate limited immunity for the State and other governmental entities in a manner consistent with the decision of the Montana Supreme Court in Karla White v. State of Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings.** (1) The legislature recognizes and reaffirms the report of the subcommittee on judiciary, contained in the interim study on limitations on the waiver of sovereign immunity (December 1976), that unlimited liability of the state and local governments for civil damages makes it increasingly difficult if not impossible for governments to purchase adequate insurance coverage at reasonable costs.

(2) The legislature finds that the obligations imposed upon governmental entities must be performed, even though the risks inherent in performing absolute obligations are great. The responsibility for confining, housing,

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and rehabilitation of persons convicted of criminal activity; the treatment and supervision of mental patients at government institutions or under government programs; the planning, construction, and maintenance of thousands of miles of highways; the operation of municipal transportation systems and airport terminals; and the operation and maintenance of schools, playgrounds, and athletic facilities are only a few of those obligations.

(3) The legislature finds that there are many functions and services both governmental and proprietary in nature traditionally offered by the state and other governmental entities which, because of the size of government operations and the inherent nature of certain functions and services, entail a potential for civil liability for tortious conduct far beyond the potential for liability of corporations and other persons in the private sector. Despite this potential for liability unparalleled in the private sector, the legislature finds that these functions of government are necessary components of modern life and that, despite limited resources and competition for those resources between necessary programs and entities, all functions and services both governmental and proprietary in nature are deserving of conscious and deliberate continuation or retirement by the people through their elected representatives. The legislature further finds that liability for damages resulting from tortious conduct by a government or its employees is more than a cost of doing business and has an effect upon government far beyond a simple reduction in governmental revenues. Unlimited liability would, because of the requirement for a balanced state budget contained in Article VIII, section 9, of the Montana constitution and because bankruptcy is a remedy unavailable to the state and most other governmental entities, result initially in increased taxes to pay judgments for damages and would eventually have the effect of reallocating state resources to a degree that would result in involuntary choices between critical state and local programs. The legislature finds these potential results of unlimited liability for tort damages to be unacceptable and further finds that, given the realities of modern government and the litigiousness of our society, there is no practical way of completely preventing tortious injury by and tort damages against the state and other governmental entities. The legislature therefore expressly finds that forced reduction in critical governmental services that could result from unlimited liability of the state and other governmental entities for damages resulting from tortious conduct of those governments and their employees constitutes a compelling state interest requiring the application of the limitations on liability and damages provided in parts 1 through 3 of this chapter.

Section 2. **Limitation on governmental liability for damages in tort.** (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000 for each claimant and $1 million for each occurrence.

(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this

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section, in which case the insurer may not claim the benefits of the limitation specifically waived.

Section 3. Section 2-9-101, MCA, is amended to read:

"2-9-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof."

Section 4. **Repealer.** Section 2-9-104, MCA, is repealed.

Section 5. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 2, chapter 9, parts 1 through 3, and the provisions of Title 2, chapter 9, parts 1 through 3, apply to sections 1 and 2.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 7. **Applicability.** This act applies retroactively, within the meaning of 1-2-109, to all claims, lawsuits, and causes of action arising after July 1, 1977.

Section 8. **Effective date.** This act is effective on passage and approval.

Section 9. **Termination date.** Section 2 terminates June 30, 1985.

Approved April 29, 1983.

CHAPTER NO. 676

AN ACT TO AMEND SECTION 13-1-106, MCA, TO REQUIRE THAT CERTAIN ELECTION POLLS OPEN AT 7 A.M.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-106, MCA, is amended to read:

"13-1-106. Time of opening and closing of polls for all elections. Polls must be open from 7 a.m. to 8 p.m., except polling places having fewer than *200* registered electors, which must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the polls shall be closed immediately."

Approved April 29, 1983.

CHAPTER NO. 677

AN ACT TO IMPLEMENT SECTION 3 OF INITIATIVE 95; CREATING AN IN-STATE INVESTMENT FUND TO BE ADMINISTERED BY THE MONTANA ECONOMIC DEVELOPMENT BOARD; PROVIDING FOR TYPES OF INVESTMENTS TO BE MADE; AMENDING SECTIONS 17-6-201 AND 17-6-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This act may be cited as the "Montana In-State Investment Act of 1983".

Section 2. **Definitions.** As used in [sections 1 through 16 and Initiative 95 approved by the people at the election on November 2, 1982], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board established in [section 19].

(2) "Clean and healthful environment" means an environment that is relatively free from pollution which threatens human health, including as

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a minimum, compliance with federal and state environmental and health standards.

(3) "Committee" means the economic development oversight committee created by [section 17].

(4) "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

(5) "Loan participation" means loans or portions thereof bought from a financial institution.

(6) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests are owned and controlled by residents of Montana.

(7) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenues in the future to the people of Montana, either directly or indirectly.

(8) "Montana economy" means any business activity in the state of Montana, including those which continue existing jobs or create new jobs in Montana.

(9) "Montana in-state investment fund" means the fund established by [section 3 of Initiative 95].

(10) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund.

Section 3. **Montana in-state investment fund.** The Montana in-state investment fund consists of 25% of the revenue deposited after June 30, 1983, into the permanent coal tax trust fund established in 17-6-203(5) and the principal payments on all investments made from the Montana in-state investment fund.

Section 4. **Unified investment program.** The Montana economic development board and the board of investments shall hold joint meetings at least twice a year as a unified investment board for purposes of coordinating investment strategies, policies, and programs as required by Article VIII, section 13, of the Montana constitution.

Section 5. **Authorized investments.** The Montana in-state investment fund must be invested in the securities authorized as permissible investments under 17-6-211 and in any other type of in-state investment authorized by rules adopted by the board.

Section 6. **Investment preferences.** In deciding which of several investments of equal or comparable security and return are to be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments that:

(1) are for locally owned enterprises that are either expanding or establishing new operations;

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(2) provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs that will be filled by nonresidents coming into the state to fill such jobs;

(3) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

(4) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

(5) benefit small- and medium-sized businesses as defined in rules adopted by the board.

Section 7. **No direct loans.** No money from the Montana in-state investment fund may be used to make direct loans to individual borrowers. Loans or portions thereof originated by a financial institution that are sold to the trust are not direct loans.

Section 8. **Limitation on size of investments.** No investment may be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the Montana in-state investment fund the total current accumulated amount of which exceeds 10% of the prior fiscal year's coal severance tax revenue deposited in the Montana in-state investment fund.

Section 9. **State participation in loans.** State participation in any loan to a business enterprise, except for a loan guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.

Section 10. **Prior commitment of funds.** The board may authorize the commitment of funds to financial institutions pursuant to rules adopted by the board, but the determination as to credit with respect to individual investments must be made by the financial institution and the board.

Section 11. **Rate of return.** In calculating the rate of return for any investment to be made from the Montana in-state investment fund, the board shall consider the long-term benefit to the Montana economy.

Section 12. **Service charges.** The board shall by rule establish reasonable service fees that may be charged on loans made from the Montana in-state investment fund.

Section 13. **Audit and performance evaluation.** (1) The board shall contract for an annual independent financial audit of the board and the Montana in-state investment fund.

(2) The board shall contract for biennial independent operational and performance evaluations of the board and the Montana in-state investment fund.

Section 14. **Reports and publications.** (1) By September 30 of each year, the board shall publish a report for distribution to the governor, the legislature, and the public. The report must be written in easily understandable language. The report must include:

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(a) financial statements audited by independent auditors;

(b) a statement of the amount of money received by the Montana in-state investment fund from each investment during the period covered;

(c) a statement of investments of the Montana in-state investment fund, including an appraisal at market value;

(d) a description of investment activity during the period covered by the report;

(e) a comparison of the Montana in-state investment fund's performance in relation to intended goals contained in [section 1 of Initiative 95];

(f) an examination of the impact of the investment criteria of [sections 5 and 6];

(g) recommendations of any needed changes; and

(h) any other information the board believes would be of interest to the governor, the legislature, and the public.

(2) The annual income statement and balance sheet of the Montana in-state investment fund must be published in at least one newspaper in each judicial district of the state by October 30 of each year.

Section 15. **Report on potential uses of coal tax trust fund.** The board shall prepare for each regular session of the legislature a report on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution.

Section 16. **Rulemaking authority.** The board may adopt rules to implement the provisions of [sections 1 through 16] and 17-6-211(5). Rules adopted by the board may include definitions of small- and medium-sized businesses, a method of committing funds to financial institutions, types of service fees, and types of investments to be made. The board may also adopt procedural rules to govern its proceedings.

Section 17. **Montana economic development board — allocation — composition — quasi-judicial powers.** (1) There is a Montana economic development board. Except as otherwise provided in this section, the board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel as provided in [section 20].

(2) The board is composed of seven members, to be appointed by the governor as prescribed in 2-15-124. The board must be broadly representative of the state, seeking to balance professional expertise and public interest and accountability and shall include at least one person representing each of the following:

(a) the financial community;

(b) small business;

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(c) agriculture; and

(d) labor.

(3) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

(4) The board shall invest the Montana in-state investment fund according to the provisions of [sections 1 through 3 of Initiative 95 and sections 1 through 16] and 17-6-201 and 17-6-211.

Section 18. **Personnel of board.** (1) The Montana economic development board may employ an investment officer, who will have general responsibility for the selection and management of the board's staff and direction of investment activity. The investment officer serves at the pleasure of the board.

(2) The board may prescribe the duties and annual salary for professional staff positions.

Section 19. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program — general provisions. (1) The uniform investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments *and the Montana economic development board* in accordance with the rules provided in this chapter *and [sections 1 through 16]* and with that degree of judgment and care, under circumstances from time to time prevailing, which *people* of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived, and preservation of purchasing power of capital during periods of sustained high monetary inflation. *Investments by the Montana economic development board are limited to those made from the Montana in-state investment fund and for the purposes set forth in [sections 1 through 16].*

(2) All state funds shall be invested and reinvested in securities enumerated in 17-6-211 to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) The board of investments has the sole authority to invest state funds *other than the Montana in-state investment fund.* No other agency may invest *such* state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(4) The board *of investments* shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made; and

(d) prepare the claim to pay for the investment.

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(5) The board of investments may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received therefor;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(6) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund and of the participation of each treasury fund account therein and shall make from time to time such reports with reference thereto as may be directed by the board of investments.

(7) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the trust and legacy fund shall be paid from income otherwise receivable from the pooled investment fund, and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds."

Section 20. Section 17-6-211, MCA, is amended to read:

"17-6-211. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 17-6-203, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 17-6-103;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States or in Canada, if the obligations purchased are payable in United States dollars, or of any corporation in which the United States government is a voting shareholder by act of congress; provided that all investments under this subsection (b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less;

(ii) the issuing corporation or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least 1 ½ to 1 and had received net income averaging $1 million or more annually for the preceding 5 years; and

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(iii) no investment may be made at any time under this subsection (c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of $500 million;

(e) interest-bearing deposits in banks, building and loan associations, and savings and loan associations located in Montana, provided, however, that the board of investments shall require pledged securities as specified in 17-6-102 (interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds);

(f) unencumbered real property, first mortgages, and participations in first mortgages on unencumbered real property, provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property;

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer;

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (1)(f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund.

(2) Investments from the pooled investment fund shall be restricted to fixed income securities described in subsections (1)(a) to (1)(e) above.

(3) Retirement funds and the fund provided for in 17-6-203, subsection (4) may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States provided that:

(a) the corporation has assets of a value not less than $10 million;

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of 5 consecutive years immediately before the date of investment,

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have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period;

(c) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 50% of the book value of such fund or would cause the stock of one corporation to exceed 2% of the book value of such retirement fund;

(d) subsection (c) does not apply to funds provided for in 17-6-203(4).

(4) The board of investments shall endeavor to direct *its portion of* the state's investment business to those investment firms and/or banks which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

(5) The Montana economic development board created in [section 19] may invest the Montana in-state investment fund in any in-state investment authorized by its rules in addition to those investments authorized by this section."

Section 21. **Temporary investment limit.** Notwithstanding the percentage figure in [section 8], the investment limit for fiscal year 1984 must be calculated based on 25% of the total coal tax deposits to the permanent coal tax trust fund made in fiscal year 1983.

Section 22. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 23. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1983.

CHAPTER NO. 678

AN ACT TO REVISE THE LAWS RELATING TO THE ANNEXATION OF LAND INTO A FIRE DISTRICT BY DELETING THE PROVISION FOR PROTESTS BY FREEHOLDERS WITHIN THE AREA OF THE EXISTING FIRE DISTRICT; REQUIRING APPROVAL BY THE BOARD OF TRUSTEES OF A PETITION FOR ANNEXATION TO THE FIRE DISTRICT; REQUIRING PUBLISHED NOTICE OF A HEARING ON A PETITION FOR ANNEXATION TO A FIRE DISTRICT; AMENDING SECTION 7-33-2125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-33-2125, MCA, is amended to read:

"**7-33-2125. Annexation of adjacent territory not contained in a fire district.** (1) Adjacent territory that is not already a part of a fire district may be annexed in the following manner:

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(a) A petition in writing by the owners of 50% or more of the area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders within such proposed area to be annexed and whose names appear upon the last completed assessment roll *shall be presented to the board of trustees of the district for approval, and if the proposed annexation is approved by the board of trustees, the petition* shall be presented to the board of county commissioners.

(b) *At the first regular meeting of the board of county commissioners after the presentation of the petition, the* commissioners shall *set a date to* hold a hearing on such petition. *The date of the hearing may not be less than 4 weeks after the date of the presentation of the petition to the board of county commissioners. The board of county commissioners shall publish notice of the hearing at least once a week for 2 successive weeks in a newspaper published within the county.*

(2) On the date set for the hearing, the board of county commissioners shall consider the petition and any objections to the annexation. The board shall approve the annexation unless a protest petition signed by a majority of the landowners of the area proposed for annexation is presented at the hearing, in which case the annexation shall be disapproved.

(3) Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district."

Approved April 29, 1983.

CHAPTER NO. 679

AN ACT PROMOTING CONSISTENCY AND CONTINUITY IN THE ADOPTION AND APPLICATION OF ENVIRONMENTAL RULES AFTER AN APPLICATION FOR AN ENVIRONMENTAL PERMIT HAS BEEN COMPLETED; AMENDING SECTION 90-1-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-101, MCA, is amended to read:

"90-1-101. Declaration of necessity and public policy. (1) It is hereby declared to be a necessity and the public policy of the state to promote, stimulate, and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor, and natural resources of the state require that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification of industry and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state, and

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the attainment of a proper balance in the overall economic base are all necessary in order to create additional employment opportunities, increase personal income, and promote the general welfare of the people of this state.

(2) The legislature recognizes that consistency and continuity in the adoption and application of environmental rules are essential to the protection and enhancement of Montana's economic well-being, that consistency and continuity are particularly important to those persons who have made a financial commitment after completing an application for an environmental permit based on the existence of certain environmental rules, and that those persons are entitled to a reasonable expectation that requirements in such a permit will not be changed to their detriment. Therefore, when a person makes a financial commitment after having completed an application for an environmental permit, it is the policy of the state not to change the requirements for such permit to the detriment of the applicant or permittee without having first taken into account and given consideration to previous expenditures made by the applicant or permittee.

(3) The department of commerce shall be regarded as performing a governmental function in carrying out the provisions of *90-1-102 through 90-1-109.*"

Approved April 29, 1983.

CHAPTER NO. 680

AN ACT TO INCREASE LICENSE FEES FOR ACTIVITIES REGULATED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; TO ESTABLISH A CLASS A-7 ANTLERLESS ELK LICENSE; AMENDING SECTIONS 87-2-301, 87-2-304, 87-2-501, 87-2-505, 87-2-507, 87-2-508, 87-2-601, AND 87-2-701, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-301, MCA, is amended to read:

"**87-2-301. Class A—resident fishing license.** Any resident, as defined by 87-2-102, upon payment of a fee of *$8*, shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the department."

Section 2. Section 87-2-304, MCA, is amended to read:

"**87-2-304. Class B-4—two-day nonresident fishing license.** Any person not a resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license, upon payment of the sum of *$6* to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a 2-day nonresident fishing license which shall authorize the holder to fish with hook and line as prescribed by rules and regulations of the department for 2 calendar days as indicated on the license."

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Section 3. Section 87-2-501, MCA, is amended to read:

"87-2-501. Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses. *(1)* Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, *$9*;

(b) Class A-4, deer B tag, *$6*;

(c) Class A-5, elk tag, *$10*;

(d) Class A-6, black or brown bear tag, $8;

(e) Class A-7, antlerless elk tag, $8.

(2) The holder of a Class A-7 antlerless elk license is entitled to take surplus antlerless elk in areas designated by the commission and at such times during the regular big game season as set forth by the commission. However, no person may take more than one elk during any license year, and a person taking an antlerless elk as provided in this subsection may not take another elk during the same license year with a Class A-5 elk tag."

Section 4. Section 87-2-505, MCA, is amended to read:

"87-2-505. Class B-10—nonresident big game combination license. Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued may, upon payment of the fee of *$300* and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle the holder to all the privileges of Class B, Class B-1, Class B-7, and black bear licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year."

Section 5. Section 87-2-507, MCA, is amended to read:

"87-2-507. Class D-1—nonresident mountain lion license. Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of *$300* may receive a Class D-1 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill mountain lion and possess the carcass thereof as authorized by department rules. *If a holder of a valid mountain lion license under this section kills a mountain lion, he must purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport such trophy."*

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Section 6. Section 87-2-508, MCA, is amended to read:

"87-2-508. Class D-2—resident mountain lion license. Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older, upon payment of a fee of *$10* may receive a Class D-2 license which shall entitle the holder thereof to pursue, hunt, shoot, and kill mountain lion and possess the carcass thereof as authorized by department rules. *If a holder of a valid mountain lion license under this section kills a mountain lion, he must purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport such trophy.*"

Section 7. Section 87-2-601, MCA, is amended to read:

"87-2-601. Class C—trapper's license. Except as otherwise provided in this chapter, a resident, as defined in 87-2-102, upon making application and payment of a fee of *$20* to the department, may receive a Class C license which shall authorize the holder thereof to trap fur-bearing animals and hunt bobcat, wolverine, and Canada lynx within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the department and at such places as may be designated in said license."

Section 8. Section 87-2-701, MCA, is amended to read:

"87-2-701. Special licenses. (1) Any applicant who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license which, in the judgment of the department, is to be issued and shall pay the following fees therefor:

(a) moose—resident, *$50*; nonresident, *$300*;

(b) mountain goat—resident, *$50*; nonresident, *$300*;

(c) mountain sheep—resident, *$50*; nonresident, *$300*;

(d) antelope—resident, *$6*; nonresident, $100;

(e) grizzly bear—resident, *$50*; nonresident, *$300*;

(f) black or brown bear—nonresident, $100.

(2) In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

(3) Special licenses shall be issued in a manner prescribed by the department."

Section 9. **Effective dates.** (1) Sections 1, 2, and 4 through 8 are effective March 1, 1984.

(2) Section 3 is effective as follows:

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(a) The amendment raising the fees for the Class A-3, deer A tag and Class A-5, elk tag is effective May 1, 1983.

(b) The amendment raising the fee for the Class A-4, deer B tag and creating the Class A-7 antlerless elk tag is effective March 1, 1984.

Approved April 29, 1983.

CHAPTER NO. 681

AN ACT TO ESTABLISH THE 55-MILE-AN-HOUR SPEED LIMIT BY LEGISLATIVE ENACTMENT; CLARIFYING THAT A VIOLATION IS NOT A MISDEMEANOR; AMENDING SECTIONS 61-8-304, 61-8-305, AND 61-8-718, MCA; REPEALING CHAPTER 122, LAWS OF 1977; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-304, MCA, is amended to read:

"61-8-304. Fuel conservation speed limit — exception to the basic rule. *(1) In order to insure conservation of a resource, the speed limit for vehicles traveling on a public highway of this state is 55 miles an hour, except as provided under 61-8-309.*

(2) A speed limit imposed pursuant to this section is an exception to the requirements of 61-8-303 and 61-8-312, and a speed in excess of the speed limit established pursuant to this section is unlawful notwithstanding any provision of 61-8-303 and 61-8-312."

Section 2. Section 61-8-305, MCA, is amended to read:

"61-8-305. Applicability of conservation speed limit. (1) The provisions of 61-8-304 shall not apply to those public streets and highways for which a speed limit lower than that required by federal law was applicable on March 2, 1974, under any other state, county, municipal, or other local law, ordinance, regulation, or order.

(2) *The fuel conservation speed limit imposed by [this act] shall remain in effect only as long as the establishment of that* speed limit *by the state* is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal-Aid *Highways Amendments of 1974* and all acts amendatory thereto or any other federal statute."

Section 3. Section 61-8-718, MCA, is amended to read:

"61-8-718. Penalty for violation of fuel conservation speed limit. (1) A person violating the speed limit imposed pursuant to 61-8-304 is guilty of the offense of unnecessary waste of a resource and upon conviction shall be fined $5, and no jail sentence may be imposed. Bond for this offense shall be $5.

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(2) For the purpose of this section only, the fees of the justice's court shall be the balance of the fine not otherwise allocated by law and shall be remitted as set forth in 3-10-603(3).

(3) A violation of 61-8-304 is not a misdemeanor pursuant to 45-2-101, 61-8-104, or 61-8-711."

Section 4. **Repealer.** Chapter 122, Laws of 1977, is repealed.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1983.

CHAPTER NO. 682

AN ACT TO ALLOW THE OPTIONS OF ASSESSING STREET LIGHTING DISTRICT COSTS ACCORDING TO THE TAXABLE VALUATION OF THE PROPERTY; PROVIDING THAT PROTEST BE WEIGHTED ACCORDING TO THE AMOUNT TO BE ASSESSED AGAINST THE PROPERTY; AMENDING SECTIONS 7-12-4305 AND 7-12-4323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4323, MCA, is amended to read:

"**7-12-4323. Assessment of costs — area or taxable valuation option.** (1) The city council *may* assess the entire cost of such improvement against the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its:

(a) area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places; *or*

(b) taxable valuation, including improvements, bears to the taxable valuation of the entire district.

(2) The council, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the property in the district.

(3) In order to apportion the cost of any of the improvements provided in this part between the corner lot and the inside lots of any block, the council may, in the resolution creating any district, provide that whenever any of the improvements provided in this part shall be along any side

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street or bordering or abutting upon the side of any corner lot of any block, the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of the land embraced within any such corner lot shall bear double the amount of the cost of such improvement that a square foot of any inside lot shall bear."

Section 2. Section 7-12-4305, MCA, is amended to read:

"7-12-4305. Consideration of protest. (1) At the next regular meeting of the city council after the expiration of the time within which said protests may be made, the city council shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive. When the protest is against the proposed work and the cost thereof is to be assessed upon property embraced within the boundaries of the district and if the city council finds that such protest is made by the owners of a majority of the property embraced within the district to be assessed for the proposed work, no further proceedings shall be taken for a period of 6 months from the date when said protest was received by the city clerk of said city council.

(2) In determining the sufficiency of protest, each protest shall be weighted in proportion to the amount of the assessment to be levied against the lot or parcel with respect to which it is made.

(3) In determining whether or not sufficient protest has been filed in a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered the same as other property in the district.

(4) The city council may adjourn said hearing from time to time."

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1983.

CHAPTER NO. 683

AN ACT CLARIFYING ADMINISTRATION AND REPORTING REQUIREMENTS RELATED TO THE PRIVILEGE TAX FOR POSSESSION OR BENEFICIAL USE BY A PRIVATE INDIVIDUAL, ASSOCIATION, OR CORPORATION OF PROPERTY WHICH FOR ANY REASON IS EXEMPT FROM TAXATION; PROVIDING EXEMPTIONS; AMENDING SECTIONS 15-23-101 AND 15-24-1203, MCA; AND PROVIDING A SEVERABILITY CLAUSE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reporting requirements — rules.** (1) Each private person who is a possessor or a beneficial user of tax-exempt property subject to tax pursuant to 15-24-1203 must, on or before March 1 each year, file

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with the department of revenue a statement of the possession or other beneficial use of tax-exempt property in the preceding calendar year and the value thereof. The statement must be in the form prescribed by the department and must be verified by the possessor or beneficial user or, in the case of an association or corporation, by an officer of the association or corporation. The statement must include:

(a) the name and address of the person, association, or corporation;

(b) the location of the tax-exempt property; and

(c) the market value in dollars and cents of the tax-exempt property.

(2) The department may adopt any reasonable rules necessary to insure that the possessor or other beneficial user of tax-exempt property complies with the provisions of this part.

Section 2. **Centrally assessed tax-exempt property.** The possession or beneficial use of tax-exempt property that exists in more than one county or more than one state must be administered under the provisions of this chapter.

Section 3. Section 15-24-1203, MCA, is amended to read:

"15-24-1203. Privilege tax on gainful use of tax-exempt property — exceptions. After March 17, 1969, there is imposed and shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. *The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax.*"

Section 4. Section 15-23-101, MCA, is amended to read:

"15-23-101. Properties centrally assessed. The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties;

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(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells; and

(5) the gross proceeds of coal mines; *and*

(6) property described in subsections (1) and (2) and which is subject to the provisions of Title 15, chapter 24, part 12."

Section 5. **Codification instruction.** (1) Section 1 is intended to be codified as an integral part of Title 15, chapter 24, part 12, and the provisions of Title 15, chapter 24, part 12, apply to section 1.

(2) Section 2 is intended to be codified as an integral part of Title 15, chapter 23, and the provisions of Title 15, chapter 23, apply to section 2.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Applicability.** This act is applicable to taxable periods beginning after December 31, 1983.

Approved April 29, 1983.

CHAPTER NO. 684

AN ACT PROVIDING FOR JOB SHARING IN STATE PERSONNEL POSITIONS; DEFINING "JOB SHARING"; ENCOURAGING THE USE OF JOB SHARING TO INCREASE PRODUCTIVITY AND EMPLOYMENT OPPORTUNITIES; AND REQUIRING A REPORT ON IMPLEMENTATION OF JOB SHARING TO THE 49TH LEGISLATURE; AMENDING SECTIONS 2-18-101 AND 2-18-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

"**2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Board" means the board of personnel appeals established in 2-15-1705.

(3) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

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(4) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(5) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under provisions of 2-18-703.

(6) "Department" means the department of administration created in 2-15-1001.

(7) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(8) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

(9) "Job sharing" means the sharing by two or more persons of a position that is considered an aggregate or permanent position.

(10) "Permanent position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget.

(11) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period in a permanent position.

(12) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(13) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(14) "Program" means a combination of planned efforts to provide a service.

(15) "Seasonal position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and which is a permanent position but which is interrupted by the seasonal nature of the position.

(16) "Temporary position" means a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months."

Section 2. Section 2-18-102, MCA, is amended to read:

"2-18-102. Personnel administration — general policy setting. (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

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(b) foster and develop programs for recruitment and selection of capable persons for permanent, seasonal, temporary, and other types of positions and for the improvement of employee effectiveness, including training, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made thereunder and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies thereunder and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that such agencies remain in compliance with policies, procedures, time tables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state. Adequate public notice shall be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect."

Section 3. **Job sharing positions — benefits.** (1) Job sharing may be used, to the extent practicable, by each agency as a means of promoting increased productivity and employment opportunities. However, job sharing may be actively pursued to fill vacated or new positions and may not be actively pursued to replace current full-time employees. However, on request of a current employee his position may be considered for job sharing. A position may be filled by more than one incumbent currently in a full-time position.

(2) Employee holiday pay, annual leave, sick leave, and health benefits for a full-time equivalent position filled by job sharing must be divided on a pro rata basis between the persons filling such position.

(3) Employees classified in a part-time status may not be reclassified to a job sharing status while employed in the position classified as part-time.

Section 4. **Legislative intent — report.** The legislature intends that the state permit job sharing in certain positions when it is done to maintain or increase efficiency in such positions and actively promote the hiring of new employees or the filling of vacant positions by using job sharing. The legislature does not intend that the state actively promote replacement of current full-time employees with job sharing employees. The legislative fiscal analyst shall report to the 49th legislature on the success of agencies in implementing this intent.

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Section 5. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 2, chapter 18, part 1, and the provisions of Title 2, chapter 18, part 1, apply to section 3.

Approved April 29, 1983.

CHAPTER NO. 685

AN ACT REESTABLISHING THE BOARD OF AERONAUTICS UNDER EXISTING STATUTORY AUTHORITY AND RULES AND CHANGING THE QUALIFICATIONS FOR MEMBERSHIP ON THE BOARD; REQUIRING THE BOARD TO APPROVE AIRPORT GRANTS AND LOANS; AMENDING SECTIONS 2-8-103 AND 2-15-1812, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of aeronautics, created pursuant to 2-15-1812, is reestablished with its existing statutory authority and rules for 6 years, pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

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(a) state board of hail insurance, department of agriculture, created by 2-15-3003;

(b) board of horseracing, department of commerce, created by 2-15-1881;

(c) board of livestock, department of livestock, created by 2-15-3102;

(d) board of milk control, department of commerce, created by 2-15-1802;

(e) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(f) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(g) public service commission, department of public service regulation, created by 69-1-102;

(h) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(i) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

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(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates on July 1, 1989: board of aeronautics, department of commerce, created by 2-15-1812."

Section 3. Section 2-15-1812, MCA, is amended to read:

"2-15-1812. Board of aeronautics — qualification — allocation — quasi-judicial. (1) There is a board of aeronautics.

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(2) The board consists of *nine* members. The members are:

(a) one member of the Montana pilots' association;

(b) one member of the Montana chamber of commerce;

(c) *one representative of the Montana airport management association*;

(d) one member of the *Montana* county commissioners association;

(e) one person actively engaged in aviation education in this state;

(f) one person representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;

(g) one member of the Montana league of cities and towns;

(h) one person representing the general public; and

(i) one person who must at the time of appointment be an active *fixed* base operator in this state, or an official of a *fixed* base operator in this state, of flying services or flying schools.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 4. **Airport grants and loans.** Any airport grant or loan that the department may be authorized to issue may be issued only after review and approval of the grant or loan request by the board.

Section 5. **Codification instruction.** Section 4 is intended to be codified as an integral part of Title 67, chapter 1, part 3, and the provisions of Title 67, chapter 1, apply to section 4.

Section 6. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1983.

CHAPTER NO. 686

AN ACT CREATING AN ECONOMIC DEVELOPMENT BOARD; CREATING AN ECONOMIC DEVELOPMENT GUARANTY FUND; PROVIDING FOR THE ISSUANCE OF BONDS TO FINANCE PROJECTS; DESIGNATING TYPES OF PROJECTS TO BE FUNDED; CREATING ACCOUNTS NECESSARY FOR CARRYING OUT THE PROGRAM; AND PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 90-6-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 26], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board created in [section 27].

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(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to [sections 1 through 26].

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.

(5) "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

(6) "Major project" means a project whose cost or appraised value exceeds $800,000.

(7) "Project" means a project as defined in 90-5-101.

(8) "Project costs" means the costs of acquiring or improving any project, including the following:

(a) the actual cost of acquiring or improving real estate for any project;

(b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds; and

(e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction.

Section 2. **Powers of the board.** The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of [sections 1 through 26];

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under [sections 1 through 26];

(5) invest any funds not required for immediate use, as the board considers appropriate, subject to any agreements with its bondholders and noteholders;

(6) arrange for lines of credit from and enter into participation agreements with any financial institution;

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(7) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and securing the payment of the bonds as provided in [sections 1 through 26];

(8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of [sections 1 through 26];

(9) sell, purchase, or insure loans to finance the costs of projects;

(10) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out [sections 1 through 26];

(11) enter into agreements or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity or organization in carrying out [sections 1 through 26];

(12) with regard to property:

(a) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of such property;

(c) hold, sell, assign, or otherwise dispose of any lease, mortgage, or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure;

(h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes, provided such action is consistent with any agreement with such holders;

(13) service, contract, and pay for the servicing of loans;

(14) provide financial analysis and technical assistance where considered appropriate;

(15) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal, interest, security, or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

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(16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17) procure insurance or guaranties in amounts and in the form the board considers desirable or necessary, from any party, including a governmental agency, against any loss in connection with its lease agreements, loan agreements, mortgage loans, and other assets or property; and

(18) perform any other acts necessary and convenient to carry out the purposes of the board and [sections 1 through 26].

Section 3. **Financing programs of the board.** (1) The board may:

(a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction, reconstruction, or improvement of projects located in the state, under terms and conditions determined by the board;

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such projects to others for such rentals and upon such terms and conditions as determined by the board; or

(c) make loans to financial institutions, under terms and conditions determined by the board, requiring the proceeds to be used by the financial institution for the purpose of financing the acquisition, construction, reconstruction, or improvement of projects located in the state.

(2) The board may not operate any project as a business or in any other manner except as the lessor thereof or as may be necessary for a temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement.

Section 4. **Bonds and notes for major projects.** (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under [section 13], and all other expenditures of the board incident to and necessary or convenient to carry out [sections 1 through 26].

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any

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revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds shall be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds shall bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under [sections 1 through 26] are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds outstanding at any one time for major projects, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $50 million.

Section 5. **Bond anticipation notes — issuance — payment of principal and interest.** (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds. The notes shall be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds thereof are needed. The notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula

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(to be determined in the manner specified in the resolution authorizing the notes to be incurred through the issuance of such notes), and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time. The board may delegate to the administrator of the board the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as considered appropriate by the board or the administrator in the event of such delegation. The board in its discretion but subject to the limitations contained in this section may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state of Montana, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board considers appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

Section 6. **Provisions of bond resolutions.** A resolution authorizing notes or bonds or any issue thereof may contain provisions, which must be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenue or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including lease agreements, loan agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from lease agreements, loan agreements, and mortgages owned by the board, and the payment of the principal of mortgages owned by the board;

(4) the setting aside of reserves for sinking funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

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(5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which shall consent thereto, and the manner in which such consent may be given;

(8) a commitment to employ adequate and competent personnel at reasonable compensation; to set salaries, fees, and charges as may be determined by the board in conjunction with the department; and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee such property, rights, powers, and duties in trust as the authority determines to be necessary;

(10) defining the acts or omissions that shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(11) any other matters of like or different character that in any way affect the security or protection of the holders of the notes or bonds.

Section 7. **Personal liability.** The board and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

Section 8. **Purchase of notes and bonds — cancellation.** The board may, subject to existing agreements with noteholders or bondholders and out of any funds available for that purpose, purchase notes or bonds of the board, which shall then be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase on which the notes or bonds become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable.

Section 9. **Trust indenture.** (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company, either inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The authority may provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the

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trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenses of the board.

Section 10. **Negotiability of bonds.** Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

Section 11. **Signatures of board members.** If board members whose signatures appear on notes, bonds, or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes the same as if the members had remained in office until delivery.

Section 12. **Accounts.** The board may create funds and accounts necessary to implement [sections 1 through 26].

Section 13. **Reserve funds and appropriations.** (1) The board may establish a capital reserve account and pay into it any:

(a) funds appropriated and made available by the state for the purpose of the account;

(b) proceeds of the sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) other funds which may be available to the board from any other source for the purpose of the account.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account may not be withdrawn at any time in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established in the resolutions or indentures of the board for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and sinking fund payments for the payment of which other money pledged is not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to an extent that does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

Section 14. **Maintenance of capital reserve account.** (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the

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capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

Section 15. **Refunding obligations.** The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under [sections 1 through 26], including the payment of any redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of [sections 1 through 26] that relate to the issuance of obligations. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations and other available funds to the payment of principal, accrued interests, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested in such securities as the board considers appropriate.

Section 16. **Tax exemption of bonds.** Bonds, notes, or other obligations issued by the board under [sections 1 through 26] and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

Section 17. **Project guaranty program.** (1) The board may guarantee and make commitments to guarantee payment required by a loan, lease, or other credit arrangement for any project funded under [sections 1 through 26] or under 90-5-101 through 90-5-112, upon such terms and conditions as the board may prescribe in accordance with [sections 1 through 26]. In administering the guaranty program, the board may require the payment of a fee or premium, establish application fees, and prescribe application, notification, contract and guaranty forms, rules, regulations, and guidelines.

(2) Guaranties by the board under [sections 1 through 26] must:

(a) be made for a project which the board finds meets the policies and objectives of [sections 1 through 26];

(b) be made to an applicant for a guaranty approved by the board;

(c) contain amortization provisions satisfactory to the board; and

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(d) be in such principal amount, be in such form, and contain such terms and provisions with respect to payment of property insurance, repairs, alterations, taxes, assessments, delinquency charges, and default remedies as the board determines to be necessary.

(3) The board is authorized from time to time to enter into guaranties, insurance contracts, or any other agreements or contracts with respect to the economic development guaranty fund and any guaranteed loan lease or other credit agreement. Any such agreement or contract may contain terms and provisions necessary or desirable in connection with the guaranty program, subject to the requirements established, including without limitation terms and provisions relating to loan documentation, review, approval procedures, origination and servicing rights and responsibilities, default obligations, procedures and obligations, and obligations with respect to guaranty contracts made under [sections 1 through 26].

(4) Any contract of guaranty made by the board under the authorization of [sections 1 through 26] must provide that claims payable thereunder must be paid from any amounts available in the economic development guaranty fund and from any amounts available under the terms of any applicable contract or agreement with the financial institution which originated the guaranteed loan. The obligation of the board to make payments under any such contract is limited solely to such sources and does not constitute a debt or liability of the state. Any guaranty contract and any rule, regulation, or guideline of the board implementing the guaranty program may contain such other terms, provisions, or conditions as the board considers necessary or appropriate, including without limitation those relating to the payment of guaranty premiums, the giving of notice, claim procedure, the sources of payment for claims, the priority of competing claims for payment, the release or termination of loan security and borrower liability, the timing of payment, the maintenance and disposition of projects and the use of amounts received during periods of loan delinquency or upon default, and any other provision concerning the rights of insured parties or conditions to the payment of guaranty claims. Any premiums for the guarantee of loan payments under the provisions of [sections 1 through 26] may be determined on such basis and be payable by such person in such amounts and at such times as the board determines, and the amount of the premium need not be uniform among the various loans, leases, or other credit agreements guaranteed.

Section 18. **Economic development guaranty fund.** (1) The board shall create an economic development guaranty fund. The fund must be held by a trustee or other fiduciary designated by the board. There must be deposited into the fund amounts, insurance fees, premiums, and such other revenues and assets as the board considers necessary to comply with any contract or agreement entered into by the board under [sections 1 through 26]. The board may borrow from and deposit in the economic development guaranty fund up to $5 million from any available state fund, including funds of the Montana board of housing.

(2) The amounts in the fund must be used to satisfy any claim resulting from a defaulted loan, lease, or other credit agreement. The amounts in the fund may also be used for any other purpose prescribed by the

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board in accordance with guaranty contracts with financial institutions entered into pursuant to [sections 1 through 26], including without limitation the protection of the interest of the board in projects during periods of delinquency or upon default.

(3) The minimum reserve requirement for the economic development guaranty fund must be such amount as may be provided in an agreement, resolution, or indenture with the holders of bonds issued under [sections 1 through 26], but not in excess of the aggregate annual payments due under the loans, leases, or other credit agreements guaranteed by the board. No loan, lease, or other credit agreement may be guaranteed by the board if the amount of money available in the economic development guaranty fund would be less than the minimum reserve requirement.

(4) In order to assure the maintenance of the economic development guaranty fund, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the economic development guaranty fund to the minimum reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the economic development guaranty fund to the minimum reserve requirement.

(5) All amounts remitted to the board under this section constitute loans to the board and must be repaid to the state treasury without interest from available operating revenues of the board in excess of amounts required for the guarantee of loans.

Section 19. **Adoption of rules.** (1) The board shall adopt rules to establish:

(a) procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with [section 24]; and

(b) a system for evaluating applications, considering the following criteria:

(i) the applicant's net worth;

(ii) the applicant's training and experience in the industry involved in the proposed project;

(iii) the applicant's prospects for succeeding in the proposed project;

(iv) the degree to which the new or increased business resulting from the loan will meet the objectives of [section 2]; and

(v) any other factors the board may prescribe.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of project applicants;

(b) approval, standards, and regulation of financial institutions under [sections 1 through 26];

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(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty programs; and

(d) such other matters as the board considers necessary or desirable.

Section 20. **Pledge of the state.** In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

Section 21. **Credit of state not pledged.** Obligations issued under the provisions of [sections 1 through 26] do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the obligation.

Section 22. **Taxation of projects.** (1) Notwithstanding the fact that title to a project may be in the board, such projects are subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in that year. Such projects are not subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in that year.

(2) When personal property owned by the board is taxed under this section and such personal property taxes are delinquent, levy by warrant for distraint for collection of such delinquent taxes may be made only on personal property against which such taxes were levied.

Section 23. **Bonds as legal investment.** (1) Bonds issued by the board under the provisions of [sections 1 through 26] are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

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(2) Bonds issued under [sections 3 through 26] are securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

Section 24. **Procedure prior to financing projects.** (1) The board may finance major projects under [sections 1 through 26] only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to [section 17]; and

(e) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 3 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

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Section 25. **Validity of pledge.** Any pledge made by the board is valid and binding from the time the pledge is made. Revenue, money, or property pledged and received by the board is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

Section 26. **Annual audit.** The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

Section 27. **Montana economic development board.** (1) There is a Montana economic development board.

(2) The board consists of seven members, who shall be appointed by the governor as prescribed in 2-15-124. The board must include at least one person representing each of the following:

(a) the financial community;

(b) small business;

(c) agriculture; and

(d) labor.

(3) Members must be appointed within 60 days of [the effective date of this act] in accordance with the manner prescribed in 2-15-124.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel as provided in [section 28].

Section 28. **Meetings and acts of the board and personnel.** (1) All meetings of the board are open to the public.

(2) All official acts of the board must be taken in a regular or special meeting and by a majority of the board.

(3) All rules adopted by the board must be in accordance with the Montana Administrative Procedure Act.

(4) The board may employ an administrator, who shall have general responsibility for the selection and management of the board's staff and direction of its activities. The administrator serves at the pleasure of the board.

(5) The board may prescribe the duties and annual salary for professional staff positions.

Section 29. Section 90-6-104, MCA, is amended to read:

"90-6-104. General powers of the board. The board may:

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(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

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(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all investment income from funds of the board less the cost for investment as prescribed by law shall be deposited in the housing finance account;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of such sale;

(15) consent, whenever it deems it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges shall be limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses which may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds;

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means*; and*

(21) lend money to the economic development board to establish the Montana economic development guaranty fund created by [section 18]."

Section 30. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 31. **Effective date.** This act is effective on passage and approval.

Section 32. **Coordination instruction.** House Bill 871 as amended by the legislature is nearly identical to House Bill 700 except for the provisions relating to the financing of major projects. If both House Bill 871

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and House Bill 700 are passed and approved, the code commissioner shall not codify both bills in their entirety but shall only codify those parts of House Bill 871 that differ from the companion parts of House Bill 700.

Approved April 29, 1983.

CHAPTER NO. 687

AN ACT REQUIRING THE GOVERNOR OR HIS DESIGNEE TO STUDY AND PREPARE RECOMMENDATIONS FOR PROVIDING SERVICES TO DEVELOPMENTALLY DISABLED PERSONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Study on developmental disabilities services.** The governor or his designee shall conduct a study of and propose a long-range plan for the delivery of services to persons with developmental disabilities. The governor or his designee shall solicit comments from the general public and especially from residents of communities where developmental disability services are provided by the state.

Section 2. **Study areas.** The governor or his designee shall:

(1) conduct a complete analysis of institutional services for developmentally disabled persons and alternatives to those services, including without limitation analysis of the following issues:

(a) types and quality of alternative services for those persons currently enrolled in programs at Boulder River School and Hospital;

(b) the comparative staffing patterns and supporting service structure and costs associated with community-based services and institutional services;

(c) the role of institutions and institutional alternatives in the continuum of state-supported services to persons with developmental disabilities;

(d) the proper and ultimate location of state administrative responsibility for all programs for persons with developmental disabilities; and

(e) the impact of closure of Boulder River School and Hospital on the community;

(2) develop a history and a projection of funding for services for developmentally disabled persons, including federal, state, local, and private sources;

(3) develop a proposed long-range plan for the state's role in serving developmentally disabled persons, including a clear mission statement for each functional organization proposed to implement the plan;

(4) analyze the costs and potential benefits of retrofitting or consolidating the physical plant at Boulder River School and Hospital in order to

make the institution more cost effective and to improve services to persons enrolled in programs there;

(5) study the feasibility of providing a training program at Boulder River School and Hospital for persons who will be employed in community-based programs;

(6) analyze means for reducing the sense of polarization within the system serving developmentally disabled persons in order to focus on the most appropriate services for the persons served;

(7) in accomplishing the duties outlined in subsections (1) through (6), solicit the comments, advice, and testimony of professionals, consumers, legislators, the general public, architects and design experts, and state agency officials; and

(8) complete preliminary recommendations not later than September 15, 1984, and publish final recommendations not later than December 1, 1984.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 29, 1983.

CHAPTER NO. 688

AN ACT PROVIDING FOR ADMINISTRATION OF THE CULTURAL AND AESTHETIC GRANTS PROGRAM BY THE MONTANA ARTS COUNCIL; PROVIDING FOR GRANT CONDITIONS AND EXPENDITURES; APPROPRIATING MONEY FOR CERTAIN PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Conditions — additional funds — accounts and reports.** (1) No grant may be awarded unless the grantee accepts the Montana arts council's conditions of the grant and signs a contract stipulating those conditions.

(2) The grantee must agree that the funds granted will be expended solely for the purpose and activities described in the approved proposal. If the grant award proves to be inadequate for the administration of the project as originally submitted, the grantee may submit, prior to the beginning of the grant period, modifications to the proposal and an operational budget supporting the modifications. All granted funds to be expended by the grantee must be spent or encumbered during the grant period.

(3) No project may receive more than 25% of the total grant award during any 6-month period, except that a grantee may accumulate grant payments. The second and each succeeding payment may be made only after an examination of the costs incurred and expenditures made to date by the grantee and a determination of any remaining balance from prior grant periods is made.

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(4) The grantee must maintain accounts, records, and other pertinent material pertaining to the costs incurred and expenditures made under the grant. The system of accounting employed by the grantee must be in accordance with generally accepted accounting principles and be applied in a consistent manner so that project costs and expenditures can be clearly identified. Accounts, records, and other pertinent material must be maintained for 3 years from the official termination date of the grant period or until an audit, approved by the council, has been completed and any questions arising from the audit have been resolved to the satisfaction of the council.

(5) Grantees must submit to the council semiannual reports of expenditures during the course of the project and such other financial and descriptive reports as the council may require. The grantee must submit, within 30 days after completion of the project, a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award must be held pending receipt of final reports by the council.

(6) The council may, at the principal place of business of the grantee and during regular business hours, examine any directly pertinent records, accounts, and documents of the grantee involving transactions related to the grant.

(7) A grantee must agree in writing that no person will, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that results from the expenditure of grant funds.

(8) A grantee must agree in writing that the grantee is the official and sole agency for the administration of the project described in the grant agreement.

Section 2. **Allocation and disbursement of funds.** (1) The Montana arts council shall allocate and disburse cultural and aesthetic project account funds as appropriated by the legislature.

(2) If the funds in the cultural and aesthetic projects account are insufficient to fund projects in the amount of the legislative appropriation for the projects, the council shall allocate and disburse the account's funds as follows:

(a) Projects of an ongoing nature during the full course of the grant period must receive the first priority for allocation of account funds. For purposes of this section, "ongoing project" means a project designed to operate throughout the grant period with a full-time staff and obligations to be met monthly.

(b) All other projects must be allocated the remaining funds on a percentage basis. The percentage must be determined for each such project by dividing the amount appropriated for each such project by the total amount appropriated for all such projects.

Section 3. **Reversion of granted funds.** At the end of a grant period, any unexpended balance of the grant shall revert to the cultural and aesthetic projects account provided for in 15-35-108.

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Section 4. **Projects approved — appropriation.** The following projects are approved and amounts appropriated to the Montana arts council for the biennium ending June 30, 1985, from the cultural and aesthetic projects account:

Project	Amount
Butte-Silver Bow Arts Chateau	$35,000
Carbon County Arts Guild	20,000
Blaine County Museum	40,000
Montana Folklife Project	45,000
Montana School of Creative Arts	12,000
Jordan Museum	4,000
Shakespeare in the Parks	20,000
Montana Association of Symphony Orchestras	13,000
Vigilante Players	5,000
Eastern Montana Resource Coordination Project	35,000
Custer County Arts Center	12,000
Montana Authors Biographical Directory	1,410
Tri-County Historical Society	58,000
Robert Yellowtail Film Documentary	28,000
K. Ross Toole's Montana	44,000
Small Town Montana	80,160
Growth Thru Art	30,000
Western Heritage Center	25,000
Helena Civic Center	10,000
Paris Gibson Square	50,000
McCone County Museum	10,000
Children's Arts Center	12,000
Powell County Museum and Arts Foundation	15,000
Butte-Silver Bow Public Archives	8,600
Rocky Boy Tribal Elders	12,500
University of Montana Magic Movers	10,000
University of Montana Repertory Theatre	25,000
Conrad Public Library	2,000
Hockaday Center for the Arts	2,650
Jeannette Rankin Statue	25,000
Carter County Museum	5,285
Troy Museum	12,225
Gallatin County Historical Society	20,000
St. Mary's Mission	7,500
Fort Owen	30,000
Three Forks Historical Society	7,500
Huntley Project Museum	10,000
Livingston Heritage Project	12,000
Operating expenses	28,649

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved April 29, 1983.

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CHAPTER NO. 689

AN ACT TO PROVIDE FOR REVERSION TO THE FORMER OWNER OF CERTAIN INTERESTS IN REAL PROPERTY ACQUIRED FOR A PUBLIC USE AND LATER ABANDONED; AND TO MODIFY THE RIGHT OF FIRST REFUSAL OF THE FORMER OWNER OF A REAL PROPERTY INTEREST ACQUIRED FOR A PUBLIC USE AND LATER ABANDONED; AMENDING SECTIONS 70-30-321 AND 70-30-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-30-321, MCA, is amended to read:

"70-30-321. Sale of property acquired for public use when use abandoned — procedure. (1) *Except as provided in subsection (3),* a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons such public use and places such interest for sale, the seller may sell the interest to the highest bidder at public auction.

(2) In the event the seller decides to sell an interest in real property as set forth in subsection (1), he shall publish notice of the public sale in a newspaper published in the county in which the real property interest is located once a week for 4 successive weeks. Sale shall be held in the county where the real property interest is located. The notice of sale shall contain the information required by 77-2-322.

(3) When an interest other than a fee simple interest in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or his successor in interest."

Section 2. Section 70-30-322, MCA, is amended to read:

"70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) *Except as provided in subsection (3), the* owner from whom the real property interest was originally acquired by eminent domain or otherwise or, if there is a successor in interest, the successor in interest shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at a sale provided for in 70-30-321. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If no bids are received by the seller and the optionholder indicates in writing to the seller that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

(3) When an interest other than a fee simple interest in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is

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terminated, the property reverts to the original owner or his successor in interest."

Section 3. **Saving clause.** This act does not affect rights and duties that matured, property that was acquired, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Approved April 30, 1983.

CHAPTER NO. 690

AN ACT TO AUTHORIZE THE COAL BOARD TO CONSIDER APPLICATIONS FOR LOANS FROM THE LOCAL IMPACT AND EDUCATION TRUST FUND ACCOUNT AND TO AWARD GRANTS AND LOANS TO GOVERNING BODIES OF FEDERALLY RECOGNIZED INDIAN TRIBES; AND PROVIDING LIMITATIONS; AMENDING SECTIONS 90-6-205, 90-6-206, 90-6-208, AND 90-6-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-205, MCA, is amended to read:

"**90-6-205. Coal board — general powers.** The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account;

(4) consider applications for loans from the local impact and education trust fund account for periods and interest rates to be determined by the board; and

(5) award grants *and loans*, subject to 90-6-207, not to exceed in any one year seven-elevenths and after June 30, 1979, seven-fifteenths of the revenue paid into the local impact and education trust fund account, to local governmental units, state agencies, *and governing bodies of federally recognized Indian tribes* to assist local governmental units *and federally recognized Indian tribes* in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. As used in the preceding sentence, "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. *Grants and loans may be from current allocations only, and no part of the principal or income of the trust referred to in 90-6-211 may be used for this purpose. The money derived from loan repayments, including the interest thereon, must be deposited to the credit of the local impact fund referred to in 90-6-202.*"

Section 2. Section 90-6-206, MCA, is amended to read:

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"90-6-206. Basis for awarding grants or loans. (1) *Grants and loans* shall be awarded on the basis of:

(a) need;

(b) degree of severity of impact from the coal development;

(c) availability of funds; and

(d) degree of local effort in meeting these needs.

(2) In determining the degree of local effort, the board shall review the millage rates levied for the present fiscal year in relation to the average millage rates levied during the 3 years immediately preceding coal development in that area or 1970, whichever is later, which impacts the local government unit applying for assistance.

(3) Millage rates for the present fiscal year which are lower than the average millage rate levied during the 3 years immediately preceding coal development in that area or 1970, whichever is later, shall be deemed by the board to indicate the lack of local effort. The application under such circumstances may be rejected.

(4) Further, in determining the degree of local effort, the board shall consider the possibility of requiring that local government unit to increase its bonded indebtedness to provide all or part of the governmental service or facility which is needed as a direct consequence of coal development.

(5) To the extent funds are needed to evaluate and plan for the impact needs caused by coal development, consideration of bond issues and millage levies may be waived.

(6) To the extent the applicant has no history of mill levies, subsections (2) and (3) do not apply."

Section 3. Section 90-6-208, MCA, is amended to read:

"90-6-208. Applications for grants or loans. The governing body of a city, town, county, school district, any other local or state governmental unit or agency, *or the governing body of a federally recognized Indian tribe* may apply for a grant *or a loan* to enable it to provide governmental services which are needed as a direct consequence of coal development. The coal board shall prescribe the form for applications. Applicants shall describe the nature of their proposed expenditures and the time involved."

Section 4. Section 90-6-209, MCA, is amended to read:

"90-6-209. Limitations on grants. The board may commit itself to the expenditure of funds for more than 1 year for a single project, as long as the grant *or loan* does not extend over more than 10 years and does not exceed reasonable revenue expectations. *The total amount of grants and loans to state agencies and Indian tribes may not exceed 7%* of the *total* money allocated to the board *during each fiscal year.*"

Section 5. **Limitations on loans.** (1) No loan may be approved by the board if the source of money for repayment would be derived from property taxes.

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(2) The repayment period for loans approved by the board may not exceed 20 years.

(3) The board shall hold all loan contracts within its administrative offices. The board may not sell, assign, or pledge a loan contract to any other entity.

(4) A local government unit or the governing body of a federally recognized Indian tribe receiving a loan from the board shall use or commit for use the loan money within 1 year of the date of the board's final approval of the loan.

(5) If a local government unit or the governing body of a federally recognized Indian tribe fails to comply with subsection (4), the entire loan must be repaid within 30 days following expiration of the 1-year period.

Section 6. **Limitations on loans and grants to Indian tribes.** No loan or grant to an Indian tribe under 90-6-205 may be approved by the board unless, with respect to that loan or grant:

(1) the governing body of the tribe has agreed:

(a) to waive its immunity from suit on any issue specifically arising from the transaction of a loan or grant obtained under this part; and

(b) to the adjudication of any dispute arising out of the loan or grant transaction in the district court of the first judicial district of the state of Montana; and

(2) approval of the transaction has been obtained from the secretary of the United States department of the interior whenever such approval is necessary.

Section 7. **Codification instruction.** Sections 5 and 6 are intended to be codified as an integral part of Title 90, chapter 6, part 2, and the provisions of Title 90, chapter 6, part 2, apply to sections 5 and 6.

Approved April 30, 1983.

CHAPTER NO. 691

AN ACT REESTABLISHING THE BOARD OF HAIL INSURANCE UNDER EXISTING STATUTORY AUTHORITY AND RULES; REVISING PROVISIONS RELATING TO THE BOARD AND TO THE HAIL INSURANCE PROGRAM; REMOVING RATE LIMITS; AMENDING SECTIONS 2-8-103, 2-15-3003, 80-2-201, 80-2-204, 80-2-221, 80-2-222, 80-2-224, 80-2-228, 80-2-232, AND 80-2-241 THROUGH 80-2-244, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Hail Insurance and requires a performance evaluation of the Board by the Legislative Audit Committee; and

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WHEREAS, as a result of the performance evaluation the Legislative Audit Committee recommends that the Board of Hail Insurance be reestablished.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Reestablishment.** The board of hail insurance, created by 2-15-3003, is reestablished under existing statutory authority and rules for 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of real estate, department of professional and occupational licensing, created by 2-15-1642;

(c) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 2-15-1656;

(d) board of institutions, department of institutions, created by 2-15-2303.

(2) The following agencies shall terminate on July 1, 1981:

(a) board of athletics, department of professional and occupational licensing, created by 2-15-1661;

(b) board of massage therapists, department of professional and occupational licensing, created by 2-15-1627;

(c) board of osteopathic physicians, department of professional and occupational licensing, created by 2-15-1607;

(d) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of commerce, created by 2-15-1812;

(b) board of horseracing, department of commerce, created by 2-15-1881;

(c) board of livestock, department of livestock, created by 2-15-3102;

(d) board of milk control, department of commerce, created by 2-15-1802;

(e) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

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(f) Montana outfitters' council, department of fish, wildlife, and parks, created by 2-15-3403;

(g) public service commission, department of public service regulation, created by 69-1-102;

(h) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(i) board of water well contractors, department of commerce, created by 2-15-1862.

(4) The following agencies terminate on July 1, 1985:

(a) the board of public accountants, department of commerce, created by 2-15-1866;

(b) the board of architects, department of commerce, created by 2-15-1871;

(c) state banking board, department of commerce, created by 2-15-1803;

(d) the state electrical board, department of commerce, created by 2-15-1874;

(e) the board of professional engineers and land surveyors, department of commerce, created by 2-15-1873;

(f) office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

(g) office of the securities commissioner, state auditor's office, created by 2-15-1901;

(h) the board of landscape architects, department of commerce, created by 2-15-1872;

(i) the board of county printing, department of commerce, created by 2-15-1811;

(j) the board of plumbers, department of commerce, created by 2-15-1875;

(k) board of physical therapy examiners, department of commerce, created by 2-15-1858.

(5) The following agencies terminate on July 1, 1987:

(a) commission for human rights, department of labor and industry, created by 2-15-1706;

(b) Montana state board of medical examiners, department of commerce, created by 2-15-1841;

(c) board of dentistry, department of commerce, created by 2-15-1842;

(d) board of pharmacists, department of commerce, created by 2-15-1843;

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(e) board of nursing, department of commerce, created by 2-15-1844;

(f) board of nursing home administrators, department of commerce, created by 2-15-1845;

(g) board of optometrists, department of commerce, created by 2-15-1846;

(h) board of chiropractors, department of commerce, created by 2-15-1847;

(i) board of radiologic technologists, department of commerce, created by 2-15-1848;

(j) board of speech pathologists and audiologists, department of commerce, created by 2-15-1849;

(k) board of hearing aid dispensers, department of commerce, created by 2-15-1850;

(l) board of psychologists, department of commerce, created by 2-15-1851;

(m) board of veterinarians, department of commerce, created by 2-15-1852;

(n) board of morticians, department of commerce, created by 2-15-1853;

(o) board of barbers, department of commerce, created by 2-15-1856;

(p) board of cosmetologists, department of commerce, created by 2-15-1857;

(q) board of sanitarians, department of commerce, created by 2-15-1861;

(r) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(6) The following agency terminates July 1, 1989: board of hail insurance, department of agriculture, created by 2-15-3003."

Section 3. Section 2-15-3003, MCA, is amended to read:

"**2-15-3003. Board of hail insurance.** (1) There is a board of hail insurance of five members consisting of the state auditor, the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor *and confirmed by the senate.*

(2) The governor shall designate one of the appointive members to act as chairman of the board.

(3) Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of his term of office, the governor shall appoint his successor and shall also appoint one of the board for chairman in case of a vacancy in that office.

(4) Each appointive member of the board shall be appointed for 3 years, except when such appointment is made to fill a vacancy on the

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board, in which event such appointee shall fill out the unexpired term of the member whose place he fills.

(5) All members of the board shall be subject to removal for cause by the governor.

(6) The board is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121. *The department may charge the board for services provided by the department pursuant to 2-15-121. The costs charged by the department must be commensurate with the cost of the services provided.*"

Section 4. Section 80-2-201, MCA, is amended to read:

"**80-2-201. Powers and duties of board of hail insurance.** The board of hail insurance provided for in 2-15-3003:

(1) shall hold meetings when necessary and essential for the proper conduct of its business;

(2) is hereby authorized, directed, and empowered to make rules as it may from time to time find practical, necessary, and beneficial for the administration of this part;

(3) shall prescribe blank forms for all purposes necessary, proper, and incidental to the effective operation and enforcement of this part; and

(4) shall *use any appropriate means of communication to inform Montana producers of* the purposes, scope, and benefits of this part in furnishing protection against loss by hail at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this part."

Section 5. Section 80-2-204, MCA, is amended to read:

"**80-2-204. Duty of agent of the department of revenue — election of benefits of law.** It shall be the duty of the agent of the department of revenue in each county in the state *upon request* to explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail the provisions of this part and the protection afforded thereby and to *issue insurance policies*, on the forms provided for such purpose, if such taxpayer desires to become subject to this part and liable for the tax levies provided hereby and thereby eligible to the benefits and protection of this part. Each such taxpayer who elects to become subject to this part shall be liable for the taxes levied for hail insurance and shall participate in the benefits and protection afforded by this part, provided that the owners of lands worked by others under lease or contract shall elect if such lands shall be subject to the tax levies herein provided for and the crops grown thereon protected for hail insurance, or the lessee of such land may tender payment of the tax levied for hail insurance to protect his crops, in cash, to the officer authorized to receive same, whereupon such crops shall become eligible to the benefits and protection afforded by this part for hail insurance."

Section 6. Section 80-2-221, MCA, is amended to read:

"**80-2-221. Tax for hail insurance.** (1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject

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to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this part.

(2) The board of hail insurance shall annually estimate, as accurately as possible, the amount required to pay all losses, interest on warrants, and costs of administration and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this part, to the department of revenue. The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis."

Section 7. Section 80-2-222, MCA, is amended to read:

"80-2-222. Board to establish amount of levy — disposition of funds. (1) The board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the state, which rates shall be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available.

(2) Notice of the various rates established for any year shall be plainly printed on the application for hail insurance, and the rates for the year shall be determined and levied by the board of hail insurance for each of the various districts as established, in such proportions as will in its judgment be fair and equitable.

(3) In making the levy provided in this section and 80-2-223, the board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants, and losses as the same shall be settled and adjusted by the board, including the losses sustained in any prior year or years under the hail insurance law that have not been paid.

(4) If at the end of any hail insurance season the board determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund the excess to the farmers insured for the year, on a pro rata or percentage basis.

(5) The board of hail insurance may direct the board of investments to invest funds from the agency fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the board of hail insurance account in the agency fund."

Section 8. Section 80-2-224, MCA, is amended to read:

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"**80-2-224. Assessment — notice — when payable.** Notice of such assessment shall be mailed by the county treasurer to each person insured in the same manner *and at the same time* as notices of *property* taxes due. The assessment shall be payable at the office of the county teasurer of each respective county."

Section 9. Section 80-2-228, MCA, is amended to read:

"**80-2-228. Reserve fund.** (1) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the levy enough in any year so that such addition to the reserve will exceed 5% of the maximum risk written for that year.

(2) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount shall be the maximum permissible reserve fund for the next year.

(3) The reserve hereby created shall be deposited in the agency fund, and the board is hereby granted the power to draw from its moneys in the fund such amounts as it considers necessary for the purpose of paying costs of administration, interest, and losses.

(4) The board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board *for the current year pursuant to 80-2-221.*"

Section 10. Section 80-2-232, MCA, is amended to read:

"**80-2-232. State treasurer's duty — transfer of funds — warrants — transfers to county and state general fund.** (1) The state treasurer shall receive all moneys paid to him under this part and shall place same to the credit of the agency fund and may from time to time transfer to the earmarked revenue fund such sums as the board of hail insurance may deem necessary and proper to pay the expenses of administration. All moneys collected by the board shall be deposited in the agency fund, and all losses shall be paid from that fund. All other costs are administrative expenses and shall be paid from the board's account in the earmarked revenue fund. If registered warrants be presented and there be no money to pay the same, such warrants shall be registered and thereafter bear interest at the rate of 4% per annum until called for payment by the state treasurer. If at any time more funds are in the earmarked revenue fund than the board estimates are needed for administrative expenses, the state treasurer may on the order of the board transfer such funds back to the agency fund as the board may direct.

(2) Upon warrants drawn by order of the board, the state treasurer shall pay out of the board's account in the agency fund to the county treasurer of each county where state hail insurance coverage is in force 2% of the gross annual levies made and collected in such county under this part

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for the use of the county as the board of county commissioners may determine.

(3) Upon authorization from the board of hail insurance, the state treasurer shall transfer out of the board's account in the agency fund to the general fund of the state of Montana *1.5%* of the gross annual levies made and collected in the state of Montana."

Section 11. Section 80-2-241, MCA, is amended to read:

"80-2-241. Report of losses. All losses by hail to crops insured under this part shall be reported within *14* days thereafter by the owner of such crops, his agent or attorney, to the board of hail insurance, which shall require the claimant to make a statement of the losses sustained, the cause thereof, and such other information as the board may require on the forms to be provided for such purpose. *If a loss is reported more than 14 days after it occurs, the board shall charge the claimant for all costs incurred in making the adjustment.*"

Section 12. Section 80-2-242, MCA, is amended to read:

"80-2-242. Appraisers — appointment — qualifications — duties. (1) The *department of agriculture* shall as soon as practicable each year *retain* a sufficient number of appraisers to appraise all losses by hail incurred under this part in the various counties. The *persons* so appointed shall be actively engaged in farming or shall have had practical experience in farming.

(2) The board may call on one or more of the duly appointed appraisers for the adjustment of each and every loss, and the said appraisers shall promptly report their findings to the board according to the rules provided by the board.

(3) No appraiser who shall be a relative, attorney, agent, employee, or creditor or in any manner interested by lien, mortgage, or otherwise in the crop injured or destroyed shall assist in adjusting any such loss.

(4) The board may send any duly appointed appraiser or appraisers into any county as the occasion may require."

Section 13. Section 80-2-243, MCA, is amended to read:

"80-2-243. Disputed appraisal. (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser, then he shall have the right to appeal to the board of hail insurance. He shall make such appeal by registered or certified mail within 10 days after receiving the adjustment offer of the board in writing. Also the board may require the posting of a cash bond of *$25* with the request for reappraisal of the first adjustment. In cases where the board requires the posting of the *$25* bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant.

(2) In case the adjuster who makes the second appraisal fails to secure an agreement, the claimant may at his option submit the matter to arbitration as herein provided or sue the board in the district court of the

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county where the loss occurred, within 90 days from the date of receipt of written notice of the second appraisal. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. Where any claimant demands arbitration, he shall, if required by the board, furnish a cash bond to the board in the sum of *$50* which shall accompany his application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the *$50* bond, then the board may use a part or all of said cash bond. In cases where the claimant secures an increase, the bond shall be promptly returned to the claimant. If the claimant elects to submit the matter to arbitration, he shall then appoint one disinterested person as appraiser and the official appraiser shall appoint another person as appraiser and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in 80-2-242. The judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss.

(3) (a) If the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum, then the same shall be paid by the board.

(b) If the insured shall be required to pay the expenses of such reappraisement as above provided, the board is hereby authorized to deduct the amount of such expenses from the amount allowed said insured before making settlement for said loss.

(4) The board shall examine all reports of appraisers and verify the same and adjust all losses and for such purposes may order hearings, subpoena witnesses, conduct examinations, and do all things necessary to secure a fair and impartial appraisement of losses by hail."

Section 14. Section 80-2-244, MCA, is amended to read:

"80-2-244. Payment of losses. (1) The board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the board shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year.

(2) The board shall on or before November 1 order payment for the amount so deducted, which payment shall be remitted to the county treasurer of the county in which the tax was assessed. The board shall then order payment for the balance of the adjustment to be sent to the claimant, provided that in no case may the payment for loss exceed $24 per acre for grain crops on nonirrigated lands, $48 per acre on irrigated lands. No claimant may receive payment for any loss incurred where the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year exceed the current levy plus the reserve, if any, then the payment of all losses shall be prorated, share and share alike, among all grain growers having loss claims adjusted and approved, and the unpaid balance of the losses shall be paid out of the reserve without interest in such order

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as the board directs, when in the judgment of the board there are sufficient moneys to provide for the payment of the same and other items payable out of the reserve. In any year the board may by resolution authorize its chairman and secretary to borrow as needed from any person, bank, or corporation such sum or sums of money as the board may consider necessary for the purpose of paying all warrants as issued.

(3) For any moneys borrowed under the provisions of this part, the board shall cause warrants to be drawn. The warrants shall bear interest at not to exceed 6% a year, and the warrants and the interest thereon shall be paid out of funds from the state hail insurance program as they are collected from the various counties in the state. The board may not at any time borrow a total sum greater than the amount of levies as made for taxes for the current year together with such delinquent taxes as remain unpaid on the books of the county treasurer."

Section 15. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1983.

CHAPTER NO. 692

AN ACT TRANSFERRING THE END-STAGE RENAL DISEASE PROGRAM TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; REPEALING ADMINISTRATIVE RULES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES IMPLEMENTING THE CHRONIC OR END-STAGE RENAL DISEASE TREATMENT PROGRAM; CLARIFYING EXISTING RULEMAKING AUTHORITY FOR THOSE RULES; AND ADOPTING NEW RULES GOVERNING THE END-STAGE RENAL DISEASE PROGRAM UNTIL SUCH TIME AS RULES ARE ADOPTED BY THE DEPARTMENT; AMENDING SECTION 53-6-202, MCA; PROVIDING A TERMINATION DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Renal program rules repealed.** The rules adopted by the department of social and rehabilitation services governing the end-stage renal program published in the Administrative Rules of Montana as ARM 46.16.101 through 46.16.103, 46.16.105, 46.16.106, 46.16.108, 46.16.110, and 46.16.115 are repealed.

Section 2. Section 53-6-202, MCA, is amended to read:

"**53-6-202. Establishment of program.** *(1)* The department of *health and environmental sciences* shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, which will have a lifesaving effect in the care and treatment of such persons. The department shall extend financial assistance to persons suffering from chronic

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renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for such diseases, including the rental or purchase of home dialysis equipment and supplies.

(2) The department shall *by rule* establish standards for determining *the amount or duration of financial assistance to be extended to individuals* under this program in order that treatment shall be provided to those who are financially unable to obtain *services* without causing severe economic imbalance in the family economic unit. Such standards shall be established without reference to maximum or minimum income levels.

(3) The department is not liable to any person for a failure to provide financial assistance to that person under this section if sufficient funds are not appropriated by the legislature."

Section 3. **Renal program rules adopted — expiration.** The department of health and environmental sciences shall extend financial assistance under 53-6-202 to persons with chronic renal diseases in accordance with the following:

(1) The appropriate division shall extend financial assistance to eligible persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for such diseases; other services include but are not limited to kidney transplantation, surgery, hospitalization, psychological treatment, transportation for applicant, donor, or attendant, attendant training, and attendant salary. These services may not exclude the rental or purchase of home dialysis equipment supplies, plumbing, wells, rewiring, and other adaptive equipment and supplies.

(2) The following eligibility requirements must be met:

(a) Applicants who are not financially able to obtain care and treatment on a continuing basis without causing severe economic imbalance to their family economic unit are eligible. Maximum or minimum income levels of the applicant or his or her family may not be considered.

(b) Vocational rehabilitation clients are not eligible unless:

(i) a reasonable period of time has elapsed (generally 6 months) during which evaluative services were provided; and

(ii) a medical determination of nonfeasibility can be shown at the close of the 6-month evaluation period.

(c) Applicants must be medically described as suffering from "chronic" end-stage renal disease, which does not include those persons with conditions which could potentially lead to the chronic state and does not include those persons with conditions medically defined as acute renal failure.

(d) Applicants eligible for medicare may be eligible if they meet the standards of this program, providing medicare benefits are fully utilized.

(e) Applicants eligible for the appropriate medicaid or medically needy programs are not eligible for this program until the benefits from medicaid and medically needy programs are exhausted.

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(f) Eligibility as to financial need must be determined by the economic need test as set forth in ARM 46.6.405 through 46.6.411. Such standards shall be established without reference to maximum and minimum income levels.

(3) The following priority for services will be provided:

(a) training for dialysis (including transportation, room, and board);

(b) transplant costs;

(c) center dialysis (when justified);

(d) medications, for treatment of end-stage renal medical conditions;

(e) fistular surgery;

(f) dialysis machine rent, supplies, and repairs;

(g) costs to install dialysis machine at home, as necessary;

(h) plumbing, wiring, and related maintenance services; and

(i) attendant.

Section 4. **Termination date.** The limitations provided in subsections (1) through (3) of [section 3] terminate when the department adopts appropriate rules under the Montana Administrative Procedure Act to implement the provisions of 53-6-202.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1983.

CHAPTER NO. 693

AN ACT TO REQUIRE STATE AND LOCAL GOVERNMENT AGENCIES TO COMPLY WITH CONDITIONS AND LIMITATIONS CONTAINED IN APPROPRIATION ACTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 12, Constitution of Montana requires the legislature to insure by law the strict accountability of all revenue received and money spent by state and local governments; and

WHEREAS, Article VIII, Section 14, Constitution of Montana prohibits the payment of money, except for interest on the public debt, from the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Conditions and limitations in appropriation acts.** A condition or limitation contained in an appropriation act shall govern the administration and expenditure of the appropriation until the appropriation has been expended for the purpose set forth in the act or until such

condition or limitation is changed by a subsequent appropriation act. In no event does a condition or limitation contained in an appropriation act amend any other statute.

Section 2. **Codification instruction.** Section 1 is to be codified as an integral part of Title 17, Chapter 8.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1983.

CHAPTER NO. 694

AN ACT LIMITING NOISE EMISSIONS FROM MOTORBOATS BY AUTHORIZING FISH AND GAME WARDENS (STATE CONSERVATION OFFICERS) THE POWER FOR ENFORCING PUBLIC NUISANCE AND DISORDERLY CONDUCT LAWS AS THEY APPLY TO THE OPERATION OF MOTORBOATS; AMENDING SECTION 87-1-506, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-506, MCA, is amended to read:

"**87-1-506. Enforcement powers of wardens.** A warden may:

(1) serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

(2) search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package or their contents upon probable cause to believe that any fish and game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;

(3) search, with a search warrant, any dwelling house or other building;

(4) seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department;

(5) seize and hold, subject to law or the orders of the department, devices which have been used to unlawfully take game, fish, birds, or fur-bearing animals;

(6) arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;

(7) enforce the disorderly conduct and public nuisance laws (45-8-101 and 45-8-111) as they apply to the operation of motorboats on all waters of the state;

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(8) exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules."

Section 2. **Presumption of nuisance and disorderly conduct.** For the purposes of this part, the operation of a motorboat that emits noise in excess of 86 dbA when measured at a distance of 50 feet is presumed to be a public nuisance and constitute disorderly conduct, except when otherwise lawfully operated under a motorboat racing permit issued by a political subdivision of the state.

Section 3. **Effective date.** This act is effective May 1, 1983.

Approved April 30, 1983.

CHAPTER NO. 695

AN ACT TO MAKE THE COAL TAX OVERSIGHT SUBCOMMITTEE A PERMANENT SUBCOMMITTEE OF THE REVENUE OVERSIGHT COMMITTEE; APPROPRIATING FUNDS FOR THE OPERATION OF THE SUBCOMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Coal tax oversight subcommittee.** (1) There is a coal tax oversight subcommittee of the revenue oversight committee.

(2) The subcommittee consists of four legislators who are not members of the revenue oversight committee. Two members must be from the senate and two members must be from the house of representatives. No more than two members may be of the same political party. The subcommittee shall be appointed by the speaker of the house and the senate committee on committees.

(3) The subcommittee may:

(a) review the programs financed by coal severance tax funds; and

(b) consider any matters relating to coal taxation.

(4) The subcommittee shall elect a chairman and may meet upon the call of that chairman. The subcommittee shall report and make recommendations to the revenue oversight committee.

Section 2. **Appropriation.** There is appropriated $10,000 from the local impact and education trust fund coal tax account to the legislative council for the biennium ending June 30, 1985, for the operation of the coal tax oversight subcommittee.

Section 3. **Effective date.** This act is effective July 1, 1983.

Approved April 30, 1983.

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CHAPTER NO. 696

AN ACT TO INCREASE THE MAXIMUM PER LOT FEE CHARGEABLE FOR SUBDIVISION REVIEW; PROVIDING FOR A LOAN AND REPAYMENT; AMENDING SECTION 76-4-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-105, MCA, is amended to read:

"76-4-105. Lot fees. (1) The department shall adopt reasonable rules setting forth fees, not to exceed *$48* per parcel, for services rendered in the review of plats and subdivisions. The rules shall provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund provided for in 17-2-102. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 76-4-128. When a subdivision is reviewed under the master plan provisions of 76-4-124, the local governing body shall, within 20 days after receiving an application under the Montana Subdivision and Platting Act, distribute the lot fees as determined by this subsection.

(3) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 3. **General fund loan.** There is authorized from the general fund to the department of health and environmental sciences a loan up to $50,000 to be used for continuing the function of subdivision review for fiscal year 1984. The loan must be repaid to the general fund no later than June 30, 1984.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1983.

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CHAPTER NO. 697

AN ACT TO IMPLEMENT ARTICLE XI, SECTION 9(2), OF THE MONTANA CONSTITUTION BY PROVIDING FOR ELECTIONS ON THE QUESTION OF REVIEW OF LOCAL GOVERNMENT AND PROCEDURES FOR THE ESTABLISHMENT AND FUNCTIONING OF LOCAL GOVERNMENT STUDY COMMISSIONS AND FOR THE IMPLEMENTATION OF THEIR RECOMMENDATIONS; AMENDING SECTIONS 7-3-143 AND 7-3-151, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [sections 1 through 25] is to provide a mechanism for local government review as required by Article XI, section 9, of the Montana constitution.

Section 2. **Purpose of study commission.** The purpose of a study commission is to study the existing form and powers of a local government and procedures for delivery of local government services and compare them with other forms available under the laws of the state.

Section 3. **Establishment of study commissions.** (1) A study commission may be established by an affirmative vote of the people. An election on the question of conducting a local government review and establishing a study commission shall be held:

(a) whenever the governing body of the local government unit calls for an election by resolution;

(b) whenever a petition signed by at least 15% of the electors of the local government calling for an election is submitted to the governing body; or

(c) in 1984 and thereafter whenever 10 years have elapsed since the electors have voted on the question of conducting a local government review and establishing a study commission.

(2) The governing body shall call for an election, to be held on the primary election date, on the question of conducting a local government review and establishing a study commission:

(a) in 1984 to implement the provisions of Article XI, section 9(2), of the Montana constitution as provided in section 2, Chapter 70, Laws of 1977;

(b) within 1 year after the 10-year period referred to in subsection (1)(c).

Section 4. **Election procedures.** (1) Votes cast on the question of establishing a study commission and for electing study commission members shall be counted, canvassed, and returned as provided in Title 13 for general elections.

(2) The election administrator shall report the results of all elections conducted under [sections 1 through 25] to the secretary of state within 15 days of the date the results become official.

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Section 5. **Election on question of establishing study commission.** (1) The question of conducting a local government review and establishing a study commission shall be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR the review of the government of (insert name of local government) and the establishment of a local government study commission consisting of (insert number of members) members to examine the government of (insert name of local government) and submit recommendations thereon.

☐ AGAINST the review of the government of (insert name of local government) and the establishment of a study commission.

(2) The question of conducting a local government review and establishing a study commission requires an affirmative vote of a majority of those voting on the question for passage.

(3) Except for elections to be conducted pursuant to [section 3(2)], a special election on the question of reviewing a local government and establishing a study commission shall be held no sooner than 60 days and no later than 90 days after the passage of a resolution or the certification of a petition calling for an election on the question.

Section 6. **Election of commission members.** (1) If the question of reviewing the local government and establishing a study commission is approved, an election to fill the positions on the local government study commission shall be held in conjunction with the 1984 general election date or at the first regularly scheduled election of the local government conducted after 90 days following the election establishing the study commission. A primary election may not be held.

(2) The names of study commission candidates who have filed declarations of nomination not later than 60 days before the date of the election shall be placed on the ballot. There is no filing fee. The election is nonpartisan, and candidates shall be listed without party or other designation or slogan. The secretary of state shall prescribe the ballot form for study commissions.

(3) Candidates for study commission positions shall be electors of the local government for which the study commission has been established. The candidates may not be elected officials of the local government.

(4) The number of candidates, equal to the number of study commission positions to be elected, receiving the highest number of votes shall be declared elected.

(5) If the number of study commissioners elected is not equal to the number required to be selected, the chairman of the governing body, with the confirmation of the governing body, shall appoint the additional study commissioners within 20 days of the election. No elected official of the local government may be appointed.

Section 7. **Composition of study commission.** (1) The number of positions, which must be an odd number of not less than three, on the

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study commission shall be set out in the resolution or petition calling for the election on the question of reviewing the local government or local governments and establishing a study commission. If the election is called under the provisions of [section 3(1)(c)], the study commission shall consist of three members unless the local governing body by resolution declares that a larger number shall be elected.

(2) Every study commission shall include as an ex officio nonvoting member a member of the governing body or an elected official or employee of the local government appointed by the governing body.

Section 8. **Term of office.** The term of office of study commission members begins on the day their election to the study commission is declared or certified under 13-15-405 or on the day of their appointment and ends on the day of the vote on the alternative plan. If the alternative plan is adopted, the term continues for 90 days after the day of the vote on the alternative plan. If the commission recommends no alternative plan, the term ends 30 days after submission of the final report in accordance with [section 19].

Section 9. **Vacancies.** Vacancies on a study commission shall be filled by appointment by the governing body of the local government being studied by the commission.

Section 10. **Compensation.** Members of the study commission may receive no compensation other than for actual and necessary expenses incurred in their official capacity.

Section 11. **Organization of commission.** (1) Not later than 10 days after all members of the study commission have been elected or appointed, the study commission shall meet and organize at a time set by the chairman of the governing body of the local government which the study commission is to examine.

(2) At the first meeting of the study commission, the study commission may elect a temporary chairman, who will serve until a permanent chairman is selected.

Section 12. **Cooperation of study commissions.** (1) Any two or more study commissions may cooperate in the conduct of their studies. A majority vote by each of the affected study commissions is required for a cooperative study.

(2) Cooperative studies do not preclude each study commission from making a separate report and recommendation.

Section 13. **Conduct of business.** (1) Meetings of the study commission shall be held upon the call of the chairman, vice-chairman in the absence or inability of the chairman, or a majority of the members. The chairman shall announce the time and place of the meetings of the study commission.

(2) The study commission shall maintain a written record of its proceedings and its finances. This record is open to inspection by any person at the office of the study commission during regular office hours.

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(3) A majority of the members of the study commission constitutes a quorum for the transaction of business, but no recommendation of a study commission may have any legal effect unless adopted by a majority of the whole number of members of the study commission.

(4) The study commission may adopt rules for its own organization and procedure.

Section 14. **Open meetings and public involvement.** All meetings of the study commission are open to the public as provided in Title 2, chapter 3, part 2. The study commission shall hold public hearings and community forums and may use other suitable means to disseminate information, receive suggestions and comments, and stimulate public discussion of its purpose, progress, conclusions, and recommendations.

Section 15. **Commission powers.** (1) A study commission may employ and fix the compensation and duties of necessary staff. State, municipal, and county officers and employees, at the request of the study commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the study commission. If leave with pay is granted, they may receive no other compensation from the study commission except mileage and per diem.

(2) A study commission may contract and cooperate with other agencies, public or private, as it considers necessary for assistance in carrying out the purposes for which the commission was established. Upon request of the chairman of the study commission, state agencies, counties, and other local governments and the officers and employees thereof shall furnish or make available to the commission such information as may be necessary for carrying out the commission's function.

(3) A study commission may:

(a) establish advisory boards and committees, including on them persons who are not members of the study commission;

(b) retain consultants; and

(c) do any other act consistent with and reasonably required to perform its function.

Section 16. **Financial administration.** (1) A study commission shall prepare a budget for each fiscal year it is in existence and submit it to the local governing body for approval.

(2) (a) For the support of the study commission, for each fiscal year the study commission is in existence, each local government under study shall appropriate the equivalent of at least 1 mill and the local government may levy up to 1 mill in excess of all other mill levies authorized by law to fund the appropriation for the support of the study commission.

(b) The local government shall provide office and meeting space and clerical assistance to the study commission. The cost of clerical assistance and other in-kind services provided by the local government may be used to partially fulfill the appropriation requirement of subsection (2)(a).

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(c) The local government may in its discretion provide additional funds and other assistance.

(3) The study commission may apply for and accept available private, state, and federal money and may accept donations from any source.

(4) All money received by the study commission shall be deposited with the local government finance administrator. The finance administrator is authorized to disburse appropriated money of the study commission on the study commission's order after approval of the budget by the governing body. Unexpended money of the study commission does not revert to the general fund of the local government at the end of the fiscal year but carries over to the study commission's appropriation for the following fiscal year. Upon termination of the study commission, unexpended money reverts to the general fund of the local government.

Section 17. **Scope of study commission recommendations.** (1) A study commission elected to examine the government of a county may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation;

(e) in cooperation with a study commission in an adjoining county, recommend county merger; or

(f) submit no recommendation.

(2) A study commission elected to examine the government of a municipality may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter;

(d) recommend municipal-county consolidation;

(e) recommend disincorporation; or

(f) submit no recommendation.

Section 18. **Study commission timetable.** (1) Each local government study commission shall, within 90 days of its organizational meeting, establish a timetable for its deliberations and actions. The timetable must be published in a local newspaper of general circulation. The timetable may be revised, but each revision must be republished.

(2) The timetable must provide, at a minimum, the following provisions, to be accomplished chronologically in the order presented:

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(a) conduct one or more public hearings for the purpose of gathering information regarding the current form, functions, and problems of local government;

(b) formulate, reproduce, and distribute a tentative report, containing the same categories of information required to be included in the final report;

(c) conduct one or more public hearings on the tentative report;

(d) adopt the final report of the commission and set the date for a special election on the question of adopting a new plan of government or, if the study commission is not recommending any changes, publish and distribute the final report as provided in [section 19] within 60 days after the final report is adopted.

Section 19. **Final report.** (1) Every study commission shall adopt a final report. If the study commission recommends an alternative form of government, the final report shall contain the following materials and documents, each signed by a majority of the study commission members:

(a) those materials and documents required of a petition proposing an alteration of an existing form of government in 7-3-142;

(b) a certificate establishing the date of the special election, which may be held in conjunction with a regularly scheduled election, at which the alternative form of government shall be presented to the electors and a certificate establishing the form of the ballot question or questions; and

(c) a certificate establishing the dates of the first primary and general elections for officers of a new government if the proposal is approved and establishing the effective date of the proposal if approved.

(2) The final report shall contain any minority report signed by members of the commission who do not support the majority proposal.

(3) If the study commission is not recommending any changes, its final report shall so indicate.

(4) The study commission shall file one copy of the final report with the department of administration. A copy of the final report shall be certified by the study commission to the municipal or county records administrator within 30 days after the adoption of the final report.

(5) Sufficient copies of the final report are to be prepared for public distribution. The final report must be available to the electors not later than 30 days prior to the election on the issue of adopting the alternative plan. Copies of the final report may be distributed to electors or residents of the local government or governments affected.

Section 20. **Special final report requirements — consolidation or county merger.** (1) Consolidation or merger may be placed on the ballot only by a joint report by cooperative study commissions.

(2) A final report, in addition to the material required in [section 19], must contain a consolidation plan if county-municipal consolidation or

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county merger is recommended. The consolidation plan must conform to the provisions and requirements relating to petitions in:

(a) 7-3-143 whenever county-municipal consolidation is recommended; or

(b) 7-3-144 whenever county merger is recommended.

Section 21. **Special final report requirements for disincorporation.** If a study commission proposes municipal disincorporation, the final report shall contain the following additional material and documents:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

Section 22. **Supplementary reports.** A study commission may prepare separate reports in addition to its final report. These reports may recommend consolidation of services and functions and indicate potential areas for interlocal agreements.

Section 23. **Publication of summary.** Each study commission shall publish once each week for 2 successive weeks in a newspaper of general circulation throughout the area of the affected local government a summary of its findings and recommendations, together with the address of a convenient public place where the text of its proposal may be obtained. The summary shall include a comparison of the existing and proposed plans of government.

Section 24. **Election on recommendation.** (1) An alternative plan of government recommended by a study commission shall be submitted to the voters as provided in 7-3-149, except that the study commission shall authorize the submission of the alternative plan of government to the voters at a special election to be held within 120 days of the adoption of the final report. The special election may be held in conjunction with any regularly scheduled election. Study commissions elected on the general election date in 1984 shall submit a final report allowing for a vote on any recommendation no later than the general election date in 1986.

(2) General ballot requirements and treatment of suboptions on an alternative plan of government recommended by a study commission shall be the same as for recommendations by petition as provided in 7-3-150 and 7-3-151.

Section 25. **Application of other sections.** (1) Except as provided in subsection (2), 7-3-122 and 7-3-152 through 7-3-161 apply to the adoption of an alternative plan of government upon recommendation by a study commission.

(2) (a) The chairman of the study commission and not the chairman of the governing body shall certify documents under 7-3-153.

(b) The study commission and not the governing body shall prepare an advisory plan for orderly transition to a new plan of local government under 7-3-157.

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(c) A study commission plan may provide for existing elected officers under 7-3-158(3).

Section 26. Section 7-3-143, MCA, is amended to read:

"7-3-143. Special requirements if consolidation recommended. (1) Whenever county-municipal consolidation is recommended, a petition, in addition to the material required in 7-3-142, must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of the local governments consolidated under its proposal;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of *all* existing boards, *bureaus, special districts,* subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts and nonconsolidated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries *(and may provide a method for adjusting boundaries),* or absorb existing boards, *bureaus, special districts,* subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts and nonconsolidated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

(3) Whenever amendments to an existing consolidation plan are recommended, a petition must contain a certificate containing amendments to the consolidation plan."

Section 27. Section 7-3-151, MCA, is amended to read:

"7-3-151. Treatment of suboptions for alternative forms. (1) No petition recommendation may involve more than three separate suboptions, and no suboption may contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government. *If the alternative form of government fails, a suboption is of no effect.*

(2) A proposed plan shall be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, chapter 3, parts 1 through 6, and the

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suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption shall be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of 4 years.

☐ Shall be appointed for a term of 4 years by the chairman of the local governing body."

Section 28. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 30, 1983.

CHAPTER NO. 698

AN ACT REVISING THE LAWS PROHIBITING DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; MAKING IT AN OFFENSE TO DRIVE A MOTOR VEHICLE WITH A BLOOD ALCOHOL CONCENTRATION OF MORE THAN .10; PROVIDING FOR THE ADMISSIBILITY OF EVIDENCE; AMENDING SECTIONS 61-5-205, 61-5-208, 61-8-101, 61-8-401 THROUGH 61-8-404, AND 61-11-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-205, MCA, is amended to read:

"61-5-205. Mandatory revocation of license upon proper authority. The division upon proper authority shall revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof except as provided in 61-5-208, *or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more*;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the division under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months."

Section 2. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation. (1) The division may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, the person may make application for a new license as provided by law but the division may not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of the person that it is safe to grant the privilege of driving a motor vehicle on the public highways. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or a narcotic drug or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof, *or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more*, the division shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the division shall revoke the license or driving privilege of the person for a period of 1 year.

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license commences from date of conviction or forfeiture of bail."

Section 3. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application — exceptions. *(1) As used in this chapter, "ways of the state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.*

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(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401, with regard to operating a vehicle while under the influence of drugs, apply *anywhere within this state;*

(c) the provisions of 61-8-301 and 61-8-401, with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 4. **Operation of motor vehicle by a person with alcohol concentration of 0.10 or more.** It is unlawful and punishable as provided in [section 11] for any person to drive or be in actual physical control of a motor vehicle upon the ways of the state open to the public while the alcohol concentration in his blood, breath, or urine is 0.10 or more.

Section 5. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a motor vehicle upon the *ways of the state open to the public*;

(b) a narcotic drug to drive or be in actual physical control of a motor vehicle within this state;

(c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state; *or*

(d) alcohol and any drug to a degree that renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use *alcohol or* such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) *Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol,*

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the concentration of alcohol in the *person's* blood at the time alleged, as shown by chemical analysis of the *person's* blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time *an alcohol concentration of* 0.05 or less, it shall be presumed that the *person* was not under the influence of alcohol.

(b) If there was at that time *an alcohol concentration* in excess of 0.05 but less than 0.10, that fact shall not give rise to any presumption that the *person* was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the *person.*

(c) If there was at that time *an alcohol concentration of* 0.10 or more, it shall be presumed that the *person* was under the influence of alcohol. *Such presumption is rebuttable.*

(4) The provisions of subsection (3) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol.

(5) Each municipality in this state is given authority to enact 61-8-714, *[section 4], [section 6], [section 11],* and subsections (1) through (4) of this section, with the word "state" in *[section 4], and* subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."

Section 6. **Multiple convictions prohibited.** When the same acts may establish the commission of an offense under both [section 4] and 61-8-401, a person charged with such conduct may be prosecuted for a violation of both [section 4] and 61-8-401. However, he may only be convicted of an offense under either [section 4] or 61-8-401.

Section 7. **Definition of alcohol concentration.** For purposes of [section 4] and 61-8-401, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath, or grams of alcohol per 75.3 milliliters of urine.

Section 8. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon the *ways of the state open to the public* shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the *ways of the state open to the public,* while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

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(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the division, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the *ways of the state open to the public,* while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer, shall suspend *for a period of 60 days* the license or driving privilege of such person on the highways of this state. Like refusal by a nonresident shall be subject to suspension by the division in like manner. All such suspensions are subject to review as hereinafter provided."

Section 9. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon *10* days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the *ways of the state open to the public,* while under the influence of alcohol, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Section 10. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of any criminal action or *other* proceeding arising out of acts alleged to have been committed by any person *in violation of [section 4] or 61-8-401:*

(a) evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible*; and*

(b) a report of the facts and results of any chemical test of a person's blood, breath, or urine administered under 61-8-402 is admissible in evidence if:

(i) the breath analysis report was prepared and verified by the person who performed the test or the blood or urine test was a laboratory analysis and the analysis was done in a laboratory operated by the department

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of justice or by any other laboratory or facility certified or exempt from certification under the rules of the department; and

(ii) the report was prepared in accordance with any applicable rules of the department; and

(iii) if the test was on a blood sample, the person withdrawing the blood must have been competent to do so under 61-8-405(1).

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the *ways of the state open to the public*, while under the influence of alcohol.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol."

Section 11. **Penalty for driving with excessive blood alcohol concentration.** (1) A person convicted of a violation of [section 4] shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) On a second conviction of a violation of [section 4], he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) On a third or subsequent conviction of a violation of [section 4], he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d) relating to revocation and suspension of driver's licenses shall apply to any conviction under [section 4].

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional

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conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then such prior offense shall be expunged from the defendant's record.

Section 12. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide or negligent homicide resulting from operation of a motor vehicle, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind *or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more*, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) operating a motor vehicle without a license to do so, 2 points (this subsection (j) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(k) speeding, 3 points;

(l) all other moving violations, 2 points. There shall be no multiple application of cumulative points when two or more charges are filed

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involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(3) "License" means any type of license or permit to operate a motor vehicle."

Section 13. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Codification instruction. Sections 4, 6, and 11 are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to sections 4, 6, and 11.

Approved April 30, 1983.

CHAPTER NO. 699

AN ACT TO REQUIRE THAT MOTOR VEHICLE FEES AND REIMBURSEMENT BE CONSIDERED IN COMPUTING EACH SCHOOL DISTRICT'S GENERAL FUND, TRANSPORTATION, AND RETIREMENT LEVIES AND CLAIMS FOR SCHOOL EQUALIZATION AID; AMENDING SECTIONS 20-9-141, 20-9-331, 20-9-333, 20-9-352, 20-9-501, AND 20-10-144, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the total of the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303, the district's permissive levy amount as provided in 20-9-352, and any additional levies authorized by the electors of the district under the provisions of 20-9-353, except that the total of the permissive and additional levies shall not exceed the total amount of the final general fund budget less the foundation program.

(b) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act;

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(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated state impact aid received under the provisions of 20-9-304;

(v) anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536;

(vi) anticipated interest to be earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(vii) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total levy requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142."

Section 2. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic tax of 25 mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (2)(a) through (2)(f) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy of 25 mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall

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be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal forest reserve funds distributed to a county and designated for the common school fund under the provisions of 17-3-213;

(b) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(c) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(d) all moneys which are paid into the county treasury as a result of fines for violations of law and the use of which is not otherwise specified by law;

(e) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for the various sources of revenue established or referred to in this section; and

(f) any federal or state moneys, *including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536,* distributed to the county as payment in lieu of the property taxation established by the county levy required by this section."

Section 3. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of 15 mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (2)(a) and (2)(b) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy for 15 mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

(2) The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall

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be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's account for deposit of the proceeds from the levy established in this section; and

(b) any federal or state moneys, *including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536,* distributed to the county as a payment in lieu of the property taxation established by the county levy required by this section."

Section 4. Section 20-9-352, MCA, is amended to read:

"20-9-352. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in 20-9-141, supplemented with any biennial appropriation by the legislature for this purpose.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 9 mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 9 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, *plus anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536,* is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund according to the provisions of 20-9-351 and subsection (3) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 6 mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, *plus anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536,* is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked

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revenue fund according to the provisions of 20-9-351 and subsection (3) of this section. The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account [program] for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium.

(3) Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid earmarked revenue fund if revenues in that fund are insufficient to meet foundation program requirements."

Section 5. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement fund. (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system shall be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system shall be calculated in accordance with 19-3-801. The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance shall be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

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(i) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year, *including anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536*; and

(ii) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (3)(a) from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special educational cooperative agreement levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds. The county commissioners shall fix and set such county levy in accordance with 20-9-142.

(5) The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(6) The net retirement fund levy requirement for districts that are members of special educational cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152."

Section 6. Section 20-10-144, MCA, is amended to read:

"20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget. Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

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(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 shall be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for such district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if such amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget shall be reduced to such limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, shall be divided by 3 and the resulting one-third amount shall be used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount shall be the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), shall be the budgeted county transportation reimbursement for elementary districts and shall be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 shall be the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5) of this section, except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of such district revenue and cash reappropriated

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shall be used to reduce the county financing obligation in subsections (2)(b) or (2)(c) and, if such county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district moneys under subsection (2)(d) above, shall be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each such county.

(3) The total of the moneys available for the reduction of property tax on the district for the transportation fund shall be determined by totaling:

(a) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for such district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

(d) anticipated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) anticipated motor vehicle fees and reimbursement under the provisions of 61-3-532 and 61-3-536; plus

(f) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus

(g) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. Such cash reserve shall not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and shall be for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund shall be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding such difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of moneys available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a) above.

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts shall be computed by adding all such requirements for all the high school districts of the county,

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including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county shall be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and such levies shall be made by the county commissioners in accordance with 20-9-142."

Section 7. **Effective date.** This act is effective July 1, 1983.

Approved April 30, 1983.

CHAPTER NO. 700

AN ACT TO EXPAND AND CLARIFY THE AUTHORITY OF THE DEPARTMENT OF ADMINISTRATION TO ALLOCATE SPACE IN STATE BUILDINGS TO STATE AGENCIES LOCATED IN HELENA OTHER THAN THE UNIVERSITY SYSTEM; AMENDING SECTIONS 2-17-101 AND 5-17-101 THROUGH 5-17-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-101, MCA, is amended to read:

"**2-17-101. Allocation of space.** *(1)* The department of administration shall periodically survey the needs of state agencies located in Helena *other than the university system* and shall assign space in state buildings to such agencies. No state agency shall lease, rent, or purchase property for quarters in Helena without prior approval of the department.

(2) The location of the chambers for the house of representatives shall be determined in the sole discretion of the house of representatives. The location of the chambers of the senate shall be determined in the sole discretion of the senate.

(3) The department of administration, with the advice of the capitol building and planning committee, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices."

Section 2. **Remodeling and renovation — senate chambers and former supreme court chambers to be preserved.** (1) Notwithstanding the provisions of Title 5, chapter 17, part 1, the department of administration shall proceed with the plans for the remodeling and renovation of the state capitol building for which moneys were appropriated by the 47th legislative assembly and reappropriated by the 48th legislative assembly.

(2) In proceeding with such plans, the department of administration shall consult with the capitol building and planning committee provided

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for in 5-17-101; however, such plans and the implementation of such plans need not be reported to the 49th legislative assembly before implementation.

(3) The department of administration in the implementation of such plans shall keep and maintain the senate chambers in its present location.

(4) If future senate bodies should determine that the location of the senate chambers is to be moved, the department of administration shall keep and maintain the physical structure and location of the present senate chambers as a single room which shall be used for legislative purposes. Such room shall not be divided in any manner, and the artwork and height of the ceiling shall be maintained and preserved.

(5) The department of administration shall keep and maintain the physical structure and location of the supreme court chambers, which were occupied by the Montana supreme court until the new justice building was completed and dedicated in 1983, as a single room which shall be used for legislative committee purposes. Such room shall not be divided in any manner, and the artwork and height of the ceiling shall be maintained and preserved.

Section 3. **Allocation of senate and house representatives workspace.** In the implementation of the plans for remodeling and renovation of the state capitol building referred to in this act, the department of administration, after having allocated adequate space for the leadership of the house of representatives and the senate and staff, work, and committee room space, shall, with respect to any space in excess of such needs, divide any office space on a proportionate basis determined by the number of house of representatives members and the number of senate members.

Section 4. Section 5-17-101, MCA, is amended to read:

"5-17-101. Capitol building and planning committee — appointment, composition, and meetings. (1) There is a capitol building and planning committee consisting of 16 members as follows:

(a) six members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) six members of the senate appointed by the committee on committees on a bipartisan basis;

(c) the director of the department of administration, *who shall serve as a nonvoting member*;

(d) the administrator of the architectural and engineering division of the department of administration, *who shall serve as a nonvoting member*;

(e) a representative of the governor's office, designated by the governor, *who shall serve as a nonvoting member*; and

(f) the director of the Lewis and Clark areawide planning organization who shall serve as a nonvoting member.

(2) The committee shall select a chairman who may call meetings at his discretion for the conduct of committee business."

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Section 5. Section 5-17-102, MCA, is amended to read:

"5-17-102. Function of committee — capitol area master plan. (1) The function of the committee is to establish and maintain a master plan for the orderly development of state buildings in the immediate area of the capital city. The master plan shall be developed and maintained with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County based without limitation upon zoning regulations, population trends, and plans for rapid transit development;

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and of state property in the immediate area of the capital city.

(2) The committee shall consult with and advise the department of administration concerning the assignment of space in the capitol complex and the actual placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol complex. No such item may be permanently displayed unless authorized by the legislature.

(3) The committee shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol complex."

Section 6. Section 5-17-103, MCA, is amended to read:

"5-17-103. Report to legislature. The committee shall prepare a written report of its activities and recommendations and present the report to the legislature at each regular session *for the purpose of assisting the legislature in determining if such recommendations should be implemented.* To prepare its report and recommendations, the committee may receive assistance from the legislative council."

Section 7. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1983.

CHAPTER NO. 701

AN ACT CREATING THE MONTANA ECONOMIC DEVELOPMENT BOARD; PROVIDING FOR THE POWERS, DUTIES, AND COMPOSITION OF THE BOARD; PROVIDING AUTHORITY TO ISSUE BONDS TO FINANCE DESIGNATED PROJECTS; CREATING NECESSARY FUNDS AND ACCOUNTS; AMENDING SECTION 90-6-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 28] shall be known and may be cited as the "Montana Economic Development Bond Act of 1983".

Section 2. **Legislative declaration.** (1) It is the policy of the state of Montana, in the interest of promoting the health, safety, and general

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welfare of all the people of the state, to increase job opportunities and to retain existing jobs by making available, through the economic development board, funds for industrial, commercial, manufacturing, natural resource, agricultural, livestock, recreational, tourist, and health care development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is the basic source of job opportunities;

(b) protection against unemployment and its economic burdens and the spread of economic stagnation can best be provided by promoting, attracting, stimulating, and revitalizing a diversified economy with contributions from industry, manufacturing, commerce, natural resource development, agriculture, livestock, recreation, tourism, and health care facilities; and

(c) the state of Montana has a responsibility to help create a favorable climate for new and improved job opportunities and a stable, growing, and healthy economy for its citizens by encouraging the development of business.

Section 3. **Definitions.** As used in [sections 1 through 28], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board created in [section 29].

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to [sections 1 through 28].

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.

(5) "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

(6) "Project" means a project as defined in 90-5-101.

(7) "Project costs" means the costs of acquiring or improving any project, including the following:

(a) the actual cost of acquiring or improving real estate for any project;

(b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

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(d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds; and

(e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction.

Section 4. **Powers of the board.** The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of [sections 1 through 28];

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under [sections 1 through 28];

(5) invest any funds not required for immediate use, as the board considers appropriate, subject to any agreements with its bondholders and noteholders;

(6) arrange for lines of credit from and enter into participation agreements with any financial institution;

(7) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and securing the payment of the bonds as provided in [sections 1 through 28];

(8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of [sections 1 through 28];

(9) sell, purchase, or insure loans to finance the costs of projects;

(10) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out [sections 1 through 28];

(11) enter into agreements or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity or organization in carrying out [sections 1 through 28];

(12) with regard to property:

(a) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of such property;

(c) hold, sell, assign, or otherwise dispose of any lease, mortgage, or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

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(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure;

(h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes, provided such action is consistent with any agreement with such holders;

(13) service, contract, and pay for the servicing of loans;

(14) provide financial analysis, planning, and technical assistance where considered appropriate;

(15) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal, interest, security, or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17) procure insurance or guaranties in amounts and in the form the board considers desirable or necessary, from any party, including a governmental agency, against any loss in connection with its lease agreements, loan agreements, mortgage loans, and other assets or property; and

(18) perform any other acts necessary and convenient to carry out the purposes of the board and [sections 1 through 28].

Section 5. **Financing programs of the board.** (1) The board may:

(a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction, reconstruction, or improvement of projects located in the state, under terms and conditions determined by the board;

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such projects to others for such rentals and upon such terms and conditions as determined by the board; or

(c) make loans to financial institutions, under terms and conditions determined by the board, requiring the proceeds to be used by the financial institution for the purpose of financing the acquisition, construction, reconstruction, or improvement of projects located in the state.

(2) The board may not operate any project as a business or in any other manner except as the lessor thereof or as may be necessary for a

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temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement.

Section 6. **Bonds and notes.** (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under [section 15], and all other expenditures of the board incident to and necessary or convenient to carry out [sections 1 through 28].

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds shall be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds shall bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under [sections 1 through 28] are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed $25 million.

Section 7. **Bond anticipation notes — issuance — payment of principal and interest.** (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds. The notes shall be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes

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must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds thereof are needed. The notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes to be incurred through the issuance of such notes), and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time. The board may delegate to the administrator of the board the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as considered appropriate by the board or the administrator in the event of such delegation. The board in its discretion but subject to the limitations contained in this section may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state of Montana, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board considers appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

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Section 8. **Provisions of bond resolutions.** A resolution authorizing notes or bonds or any issue thereof may contain provisions, which must be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenue or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including lease agreements, loan agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from lease agreements, loan agreements, and mortgages owned by the board, and the payment of the principal of mortgages owned by the board;

(4) the setting aside of reserves for sinking funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which shall consent thereto, and the manner in which such consent may be given;

(8) a commitment to employ adequate and competent personnel at reasonable compensation; to set salaries, fees, and charges as may be determined by the board in conjunction with the department; and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee such property, rights, powers, and duties in trust as the authority determines to be necessary;

(10) defining the acts or omissions that shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(11) any other matters of like or different character that in any way affect the security or protection of the holders of the notes or bonds.

Section 9. **Personal liability.** The board and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

Section 10. **Purchase of notes and bonds — cancellation.** The board may, subject to existing agreements with noteholders or bondholders

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and out of any funds available for that purpose, purchase notes or bonds of the board, which shall then be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase on which the notes or bonds become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable.

Section 11. **Trust indenture.** (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company, either inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The authority may provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenses of the board.

Section 12. **Negotiability of bonds.** Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

Section 13. **Signatures of board members.** If board members whose signatures appear on notes, bonds, or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes the same as if the members had remained in office until delivery.

Section 14. **Accounts.** The board may create funds and accounts necessary to implement [sections 1 through 28]. The funds and accounts may include:

(1) a bond proceeds fund into which bond proceeds are deposited;

(2) a common bond fund consisting of:

(a) a common debt service account;

(b) a capital reserve account as provided in [section 15]; and

(c) an operating account for defraying the operational costs of the board; and

(3) other funds or accounts.

Section 15. **Reserve funds and appropriations.** (1) The board may establish a capital reserve account and pay into it any:

(a) funds appropriated and made available by the state for the purpose of the account;

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(b) proceeds of the sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and

(c) other funds which may be available to the board from any other source for the purpose of the account.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account may not be withdrawn at any time in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established in the resolutions or indentures of the board for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and sinking fund payments for the payment of which other money pledged is not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to an extent that does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

Section 16. **Maintenance of capital reserve account.** (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

Section 17. **Refunding obligations.** The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under [sections 1 through 28], including the payment of any redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of [sections 1 through 28] that relate to the issuance of obligations. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations and other available funds to the payment of principal, accrued interests, and any redemption

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premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested in such securities as the board considers appropriate.

Section 18. **Tax exemption of bonds.** Bonds, notes, or other obligations issued by the board under [sections 1 through 28] and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

Section 19. **Project guaranty program.** (1) The board may guarantee and make commitments to guarantee payment required by a loan, lease, or other credit arrangement for any project funded under [sections 1 through 28] or under 90-5-101 through 90-5-112, upon such terms and conditions as the board may prescribe in accordance with [sections 1 through 28]. In administering the guaranty program, the board may require the payment of a fee or premium, establish application fees, and prescribe application, notification, contract and guaranty forms, rules, regulations, and guidelines.

(2) Guaranties by the board under [sections 1 through 28] must:

(a) be made for a project which the board finds meets the policies and objectives of [sections 1 through 28];

(b) be made to an applicant for a guaranty approved by the board;

(c) contain amortization provisions satisfactory to the board; and

(d) be in such principal amount, be in such form, and contain such terms and provisions with respect to payment of property insurance, repairs, alterations, taxes, assessments, delinquency charges, and default remedies as the board determines to be necessary.

(3) The board is authorized from time to time to enter into guaranties, insurance contracts, or any other agreements or contracts with respect to the economic development guaranty fund and any guaranteed loan lease or other credit agreement. Any such agreement or contract may contain terms and provisions necessary or desirable in connection with the guaranty program, subject to the requirements established, including without limitation terms and provisions relating to loan documentation, review, approval procedures, origination and servicing rights and responsibilities, default obligations, procedures and obligations, and obligations with respect to guaranty contracts made under [sections 1 through 28].

(4) Any contract of guaranty made by the board under the authorization of [sections 1 through 28] must provide that claims payable thereunder must be paid from any amounts available in the economic development guaranty fund and from any amounts available under the terms of any applicable contract or agreement with the financial institution which originated the guaranteed loan. The obligation of the board to

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make payments under any such contract is limited solely to such sources and does not constitute a debt or liability of the state. Any guaranty contract and any rule, regulation, or guideline of the board implementing the guaranty program may contain such other terms, provisions, or conditions as the board considers necessary or appropriate, including without limitation those relating to the payment of guaranty premiums, the giving of notice, claim procedure, the sources of payment for claims, the priority of competing claims for payment, the release or termination of loan security and borrower liability, the timing of payment, the maintenance and disposition of projects and the use of amounts received during periods of loan delinquency or upon default, and any other provision concerning the rights of insured parties or conditions to the payment of guaranty claims. Any premiums for the guarantee of loan payments under the provisions of [sections 1 through 28] may be determined on such basis and be payable by such person in such amounts and at such times as the board determines, and the amount of the premium need not be uniform among the various loans, leases, or other credit agreements guaranteed.

Section 20. **Economic development guaranty fund.** (1) The board shall create an economic development guaranty fund. The fund must be held by a trustee or other fiduciary designated by the board. There must be deposited into the fund amounts, insurance fees, premiums, and such other revenues and assets as the board considers necessary to comply with any contract or agreement entered into by the board under [sections 1 through 28]. The board may borrow from and deposit in the economic development guaranty fund up to $2.5 million from any available state fund, including funds of the Montana board of housing.

(2) The amounts in the fund must be used to satisfy any claim resulting from a defaulted loan, lease, or other credit agreement. The amounts in the fund may also be used for any other purpose prescribed by the board in accordance with guaranty contracts with financial institutions entered into pursuant to [sections 1 through 28], including without limitation the protection of the interest of the board in projects during periods of delinquency or upon default.

(3) The minimum reserve requirement for the economic development guaranty fund must be such amount as may be provided in an agreement, resolution, or indenture with the holders of bonds issued under [sections 1 through 28], but not in excess of the aggregate annual payments due under the loans, leases, or other credit agreements guaranteed by the board. No loan, lease, or other credit agreement may be guaranteed by the board if the amount of money available in the economic development guaranty fund would be less than the minimum reserve requirement.

(4) In order to assure the maintenance of the economic development guaranty fund, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the economic development guaranty fund to the minimum reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the economic development guaranty fund to the minimum reserve requirement.

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(5) All amounts remitted to the board under this section constitute loans to the board and must be repaid to the state treasury without interest from available operating revenues of the board in excess of amounts required for the guarantee of loans.

Section 21. **Adoption of rules.** (1) The board shall adopt rules to establish:

(a) procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with [section 26]; and

(b) a system for evaluating applications, considering the following criteria:

(i) the applicant's net worth;

(ii) the applicant's training and experience in the industry involved in the proposed project;

(iii) the applicant's prospects for succeeding in the proposed project;

(iv) the degree to which the new or increased business resulting from the loan will meet the objectives of [section 2]; and

(v) any other factors the board may prescribe.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of project applicants;

(b) approval, standards, and regulation of financial institutions under [sections 1 through 28];

(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty programs; and

(d) such other matters as the board considers necessary or desirable.

Section 22. **Pledge of the state.** In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

Section 23. **Credit of state not pledged.** Obligations issued under the provisions of [sections 1 through 28] do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power

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of the state is pledged to the payment of the principal or interest on the obligation.

Section 24. **Taxation of projects.** (1) Notwithstanding the fact that title to a project may be in the board, such projects are subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in that year. Such projects are not subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in that year.

(2) When personal property owned by the board is taxed under this section and such personal property taxes are delinquent, levy by warrant for distraint for collection of such delinquent taxes may be made only on personal property against which such taxes were levied.

Section 25. **Bonds as legal investment.** (1) Bonds issued by the board under the provisions of [sections 1 through 28] are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under [sections 5 through 28] are securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

Section 26. **Procedure prior to financing projects.** (1) The board may finance projects under [sections 1 through 28] only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in [section 2];

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to [section 19]; and

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(e) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance such project or projects, to create and maintain reserves therefor, and to meet all costs and expenses of issuing and servicing the bonds.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county must, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 3 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

Section 27. **Validity of pledge.** Any pledge made by the board is valid and binding from the time the pledge is made. Revenue, money, or property pledged and received by the board is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

Section 28. **Annual audit.** The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

Section 29. **Montana economic development board.** (1) There is a Montana economic development board.

(2) The board consists of seven members, who shall be appointed by the governor as prescribed in 2-15-124. The board must include at least one person representing each of the following:

(a) the financial community;

(b) small business;

(c) agriculture; and

(d) labor.

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(3) Members must be appointed within 60 days of [the effective date of this act] in accordance with the manner prescribed in 2-15-124.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel as provided in [section 30].

Section 30. **Meetings and acts of the board and personnel.** (1) All meetings of the board are open to the public.

(2) All official acts of the board must be taken in a regular or special meeting and by a majority of the board.

(3) All rules adopted by the board must be in accordance with the Montana Administrative Procedure Act.

(4) The board may employ an administrator, who shall have general responsibility for the selection and management of the board's staff and direction of its activities. The administrator serves at the pleasure of the board.

(5) The board may prescribe the duties and annual salary for professional staff positions.

Section 31. Section 90-6-104, MCA, is amended to read:

"90-6-104. General powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

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(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

(10) service and contract and pay for the servicing of loans;

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

(12) provide general consultative services to housing developments for persons and families of lower income and the residents thereof with respect to counseling and training in management, home ownership, and maintenance where these services are not otherwise available;

(13) invest any funds not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except all investment income from funds of the board less the cost for investment as prescribed by law shall be deposited in the housing finance account;

(14) sell its loans or securities to the federal national mortgage association or any other agency or instrumentality of the United States and invest in the capital stock issued by the association or other agency or instrumentality to the extent, if any, required as a condition of such sale;

(15) consent, whenever it deems it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges shall be limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses which may be incurred.

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(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds;

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means; *and*

(21) lend money to the economic development board to establish the Montana economic development guaranty fund created by [section 20]."

Section 32. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 33. **Effective date.** This act is effective on passage and approval.

Section 34. **Coordination instruction.** (1) If House Bill No. 100, including the section of that bill creating the Montana economic development board, is passed and approved, the board created in this act is the same board as created in House Bill No. 100. The code commissioner is instructed to note this and codify accordingly.

(2) If section 17 of HB 100 is passed and approved, the economic development oversight committee has full oversight of the implementation of this act.

Approved April 30, 1983.

CHAPTER NO. 702

AN ACT TO ALLOW COUNTIES AND MUNICIPALITIES TO AMEND THEIR FINAL BUDGETS BECAUSE OF SHORTFALLS IN REVENUES OR SAVINGS; AMENDING SECTIONS 7-6-2320, 7-6-2324, 7-6-4231, AND 7-6-4235, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2320, MCA, is amended to read:

"7-6-2320. Final budget — approval, adoption, and amendment. (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, shall set out:

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(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in the fund at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

(3) (a) Subject to compliance with the procedures set forth in subsection (4), the board may approve and adopt a resolution amending a final budget when:

(i) shortfalls in anticipated and budgeted revenues occur that, unless reductions in appropriations are made, will result in expenditures for the year exceeding actual revenues and cash balances available therefor; or

(ii) savings result from unanticipated adjustments in projected expenditures.

(b) Amended appropriations must be classified as:

(i) salaries and wages;

(ii) maintenance and operation;

(iii) capital outlay;

(iv) interest and debt redemption; or

(v) miscellaneous.

(4) Prior to amending a final budget, the board shall:

(a) hold a public hearing on the proposed amendments at least 7 days prior to a vote on the resolution amending the budget; and

(b) publish notice, at least once, in a newspaper of general circulation in the county at least 6 but not more than 16 days before the hearing on the budget amendments. The published notice must specify the date, time, place, and subject of the hearing."

Section 2. Section 7-6-2324, MCA, is amended to read:

"**7-6-2324. Limitations on appropriations after budget adopted.** (1) The estimates of expenditures, itemized and classified as required in 7-6-2313 and 7-6-2314 and as finally fixed and adopted *and as may be amended as provided in 7-6-2320* by said board of county commissioners, shall constitute the appropriations for the county for the fiscal year intended to be covered thereby.

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(2) Except as provided in 3-5-404, 7-6-2325, and 7-31-2101, the county commissioners and every other county official, including judges of the district court, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively."

Section 3. Section 7-6-4231, MCA, is amended to read:

"7-6-4231. Final budget — approval, adoption, and amendment. (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized and the fund out of which it is to be paid, shall set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter it at length in the official minutes of the council.

(3) (a) Subject to compliance with the procedures set forth in subsection (4), the council may approve and adopt a resolution amending a final budget when:

(i) shortfalls in anticipated and budgeted revenues occur that, unless reductions in appropriations are made, will result in expenditures for the year exceeding actual revenues and cash balances available therefor; or

(ii) savings result from unanticipated adjustments in projected expenditures.

(b) Amended appropriations must be classified as:

(i) salaries and wages;

(ii) maintenance and operation;

(iii) capital outlay;

(iv) interest and debt redemption; or

(v) miscellaneous.

(4) Prior to amending a final budget, the council shall:

(a) hold a public hearing on the proposed amendments at least 7 days prior to a vote on the resolution amending the budget; and

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(b) publish notice at least once in a newspaper of general circulation in the city or town at least 6 but not more than 16 days before the hearing on the budget amendments. The published notice must specify the date, time, place, and subject of the hearing."

Section 4. Section 7-6-4235, MCA, is amended to read:

"**7-6-4235. Limitations on appropriations after budget adopted.** (1) The estimates of expenditures, itemized and classified as required in 7-6-4224 and 7-6-4225 and as finally fixed and adopted *and as may be amended as provided in 7-6-4231* by said council, shall constitute the appropriations for the municipality for the fiscal year intended to be covered thereby.

(2) Except as provided in 7-6-4236, the council and every other municipal official shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively."

Section 5. **Effective date.** This act is effective July 1, 1983.

Approved April 30, 1983.

CHAPTER NO. 703

AN ACT TO CREATE A MONTANA HEALTH FACILITY AUTHORITY WITH POWER TO LEND MONEY TO HEALTH INSTITUTIONS TO CONSTRUCT OR RENOVATE HEALTH FACILITIES; AND EMPOWERING THE AUTHORITY TO ISSUE BONDS TO FINANCE ITS PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Montana health facility authority.** (1) There is created a public body corporate designated as the Montana health facility authority. This authority is constituted a public instrumentality, and its exercise of the powers conferred by [sections 2 through 26] shall be considered and held to be the performance of an essential public function.

(2) The authority consists of seven members appointed by the governor as prescribed in 2-15-124. The board must be broadly representative of the state, seeking to balance professional expertise and public accountability.

(3) Members must be appointed within 60 days of [the effective date of this act] in accordance with the manner prescribed in 2-15-124.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel as provided in [section 9].

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Section 2. **Short title.** [Sections 2 through 26] may be cited as the "Montana Health Facility Authority Act".

Section 3. **Definitions.** As used in [sections 2 through 26], unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana health facility authority created in [section 1].

(2) "Costs" means costs allowed under [section 5].

(3) "Health facility" means any facility provided for in [section 4].

(4) "Health institution" means any public or private nonprofit hospital, corporation, or other organization authorized to provide or operate a health facility in this state.

(5) "Participating health institution" means a health institution that undertakes the financing, refunding, or refinancing of obligations on the construction or acquisition of a health facility pursuant to the provisions of [sections 2 through 26].

(6) "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of such facilities.

Section 4. **Eligible health facility.** (1) Eligible health facility means any structure or building used as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; center for developmentally disabled; center for the handicapped; chemical dependency treatment center; nursing school; medical teaching facility; laboratory; dental care facility; or other structure or facility related to any of the foregoing or required or useful for the operation of a health facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the foregoing.

(2) An eligible health facility does not include such items as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and eligible health facility does not include a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

Section 5. **Allowable costs.** Costs eligible for financing or refinancing under [sections 2 through 26] include:

(1) the total of all reasonable or necessary costs incidental to the acquisition, construction, reconstruction, repair, alteration, equipment, enlargement, and improvement of an eligible health facility and the acquisition of all real and personal property interests necessary or useful in connection with the facility and all other undertakings which the authority considers reasonable or necessary for the development of the facility;

(2) the cost of demolishing or removing any building or structure on land so acquired, the cost of acquiring any land to which such building or

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structure may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if judged advisable by the authority, for a period after completion of such construction, the cost of financing the facility, including interest on bonds and notes issued by the authority to finance the facility;

(3) reserves for principal and interest and for extensions, enlargements, additions, and improvements, including without limitation the cost of studies and surveys;

(4) the costs for land title and mortgage guaranty policies;

(5) the costs of plans, specifications, and architectural and engineering services;

(6) the costs of legal, organization, marketing, or other special services;

(7) the costs of financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings; and

(8) the costs of rehabilitation, reconstruction, repair, or remodeling of existing buildings; and

(9) all other expenses necessary and incidental to the construction and acquisition of the facility, the financing of such construction, and the acquisition and placing of the facility into operation.

Section 6. **Quorum — mode of action — expenses.** Four members of the authority constitute a quorum for the purpose of conducting business. Action may be taken by the authority upon the affirmative vote of at least four of its members. No vacancy in the membership of the authority impairs the right of a quorum to exercise all the rights and perform all the duties of the authority. Each meeting of the authority for any purpose must be open to the public. Notice of meetings must be as provided in the bylaws of the authority. Resolutions need not be published or posted. Members of the authority may receive no compensation for services but are entitled to necessary expenses, as provided in 2-18-501 through 2-18-503, incurred in the discharge of their duties.

Section 7. **Powers of authority.** The authority may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of [sections 2 through 26];

(4) issue bonds or incur other debt as described in [sections 2 through 26], including the issuance of notes or refunding bonds;

(5) invest any funds obtained from the issuance of bonds and notes which are not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for investment, must be deposited in the bond proceeds fund;

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(6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it considers appropriate to carry out the purposes of [sections 2 through 26];

(7) participate with any financial institution in the purchase or guarantee of any loan or obligation;

(8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding of eligible facilities;

(9) enter into agreements or make advance commitments to insure repayments required by loan agreements made by a lender. Such agreements are subject to terms and conditions established by the authority.

(10) sell, purchase, or insure loans to finance the costs of eligible facilities;

(11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a municipality, or any other source;

(12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity consistent with the exercise of any power under [sections 2 through 26];

(13) with regard to property:

(a) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof;

(c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and

(h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes if such action is consistent with any agreement with such holders;

(14) service, contract, and pay for the servicing of loans;

(15) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of eligible health facilities whenever considered appropriate;

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(16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, or payment of any installment of principal, interest, or security or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(17) collect reasonable interest, fees, and charges from participating institutions in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. The interest, fees, and charges shall be deposited to an earmarked revenue account to the credit of the authority. Interest, fees, and charges are limited to the amounts required to pay the costs of the authority, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(18) perform any other acts necessary and convenient to carry out the purposes of [sections 2 through 26].

Section 8. **Restriction on operating facility — leases.** (1) The authority may not operate an eligible health facility as a business other than as a lessee or lessor. The lease must provide for rentals adequate to pay the principal and interest due on bonds and to create and maintain such reserves and accounts for depreciation as the authority determines necessary.

(2) The lease may contain terms and conditions that the authority considers proper. The lease may be terminated upon failure of the participating health institution to comply with any obligation under the lease. The lease may include a renewal or an option to purchase provision upon such terms or conditions as the authority considers desirable.

(3) Upon payment of all indebtedness incurred by the authority for financing a facility, the authority may convey any or all of the facility to the lessee, with or without consideration.

Section 9. **Staff of authority.** The authority may employ or contract for any professional staff or consultants necessary. Such employment and contracting must be done in consultation with the department.

Section 10. **Loan limitation.** No loan made by the authority may exceed the total cost of the eligible health facility being financed as such cost is determined by the participating institution and approved by the authority.

Section 11. **Agent of the authority.** The authority may designate a participating health institution as its agent for determining the location and character of an eligible health facility undertaken by that institution under the provisions of [sections 2 through 26]. As agent, the institution may acquire, construct, reconstruct, renovate, replace, improve, maintain, repair, operate, lease, as lessee or lessor, and enter into contracts for any and all such purposes, including contracts for the management and operation of the facility.

Section 12. **Notes.** The authority is authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment

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of all or any part of the cost of any facility, and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. Any resolution authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution authorizing bonds of the authority. The authority may include in its notes any terms, covenants, or conditions that it is authorized to include in any bonds. All notes must be payable from the proceeds of bonds, renewal notes, the revenues of the authority, or other money available therefor and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

Section 13. **Bonds of the authority.** (1) The authority may borrow money and issue bonds not in excess of $50 million for any 2-year period.

(2) Bonds must be authorized and dated and shall mature as the authority may specify, except that no bond may mature more than 40 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the proper registered or bearer form, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves therefor;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority may combine, for the purposes of a single offering, bonds financing more than one facility under [sections 2 through 26].

Section 14. **Security of bondholders.** (1) The payment of the principal of and interest on any bonds issued under [sections 2 through 26]

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must be secured by a pledge of the revenues out of which such bonds are made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the participating health institution;

(b) a pledge of the lease or loan agreement relating to such facility; or

(c) such other security device as may be considered most advantageous by the authority.

(3) The proceedings under which the bonds are authorized to be issued under the provisions of [sections 2 through 26] and any mortgage given to secure the same, including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds, as the authority considers advisable. Such provisions may not be in conflict with the provisions of [sections 2 through 26], including without limitation provisions relating to:

(a) fixing and collection of rents or payments under any lease or loan agreement concerning the facility covered by such proceedings or mortgage;

(b) terms to be incorporated in the lease or loan agreement;

(c) maintenance and insurance of such facility;

(d) creation and maintenance of special funds from the revenues of such facility; and

(e) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(4) The proceedings authorizing any bonds under the provisions of [sections 2 through 26] and any mortgage, including a mortgage given by the lessee or borrower, securing such bonds may provide that in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if he is the highest bidder therefor. No breach of any such agreement may impose any pecuniary liability upon the authority.

Section 15. **Purchase of bonds.** The authority may purchase its bonds or notes. The authority may hold, pledge, cancel, or resell such

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bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

Section 16. **Procedure for issuance of bonds.** (1) The authority may not undertake to finance any eligible health facility unless, prior to the issuance of any bonds or notes, the members find that:

(a) such facility will be operated by a health institution for the purpose of fulfilling its obligation to provide health care facilities; and

(b) such facility has been reviewed and approved by the appropriate regional and state health planning boards and has received any approval required by Title 50, chapter 5, part 3.

(2) The authority may not allow the proceeds of any bonds or notes to be expended for any facility until it has been shown that such facility is financially feasible and that there will be sufficient revenues to assure that principal and interest payments are made when they become due.

(3) The authority may not allow the proceeds of any bonds or notes to be expended for any facility until it has considered the ability of the health institution to operate such a facility based on the health institution's experience and expertise.

(4) The authority must insure that its financings consistently provide fair and realistic terms and covenants sufficient to protect the position of the lenders or bondholders.

Section 17. **Trust agreement to secure bonds.** In the discretion of the authority, any bonds issued under [sections 2 through 26] may be secured by a trust agreement between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Montana. The trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. The trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly such provisions as have been specifically authorized to be included in any resolution of the authority authorizing bonds. Any bank or trust company incorporated under the laws of this state, which may act as depository of the proceeds of bonds or of revenues or other money, may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, any such trust agreement or resolution may contain such other provisions as the authority may consider reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of an eligible health facility.

Section 18. **Credit of state not pledged.** Obligations issued under the provisions of [sections 2 through 26] do not constitute a debt, liability,

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obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the health institution being financed. An obligation issued under [sections 2 through 26] must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

Section 19. **Exemption from taxation — securities law.** (1) The authority performs a public function for the benefit of the people of the state for the improvement of their health and living conditions and is a public instrumentality of the state. Accordingly, the income or other revenues of the authority and all property owned by the authority and any bonds, notes, or other obligations issued under [sections 2 through 26], their transfer, and income therefrom, including any profit made on the sale thereof, are exempt at all times from all taxation in the state of Montana.

(2) Bonds issued by the authority are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

Section 20. **Necessary expenses — fees.** (1) All expenses of the authority incurred in carrying out the provisions of [sections 2 through 26] are payable solely from funds provided under the authority of [sections 2 through 26], and no liability may be incurred by the authority beyond the extent to which money has been provided under [sections 2 through 26], except for the purposes of meeting the necessary expenses of initial organization and operation and until such date as the authority derives money from funds provided under [sections 2 through 26]. The authority may borrow money for necessary expenses of organization and operation. Such borrowed money must be repaid within a reasonable time after the authority receives funds provided for under [sections 2 through 26].

(2) When an application is made to the authority by any participating health institution for financial assistance to provide for its facilities, the application may be accompanied by an initial planning service fee in an amount determined by the authority. Such initial planning service fee may be included in the cost of the facilities to be financed and is not refundable by the authority, whether or not any application is approved. In addition to the initial fee, an annual planning service fee may be paid to the authority by each participating health institution in an amount determined by the authority. The annual planning service fee may be paid on such dates or in installments as may be satisfactory to the authority. The fees must be used for:

(a) necessary expenses to determine the need for facilities in the area concerned, and to that end the authority may utilize recognized voluntary and official health planning organizations and agencies at local, regional, and state levels;

(b) necessary administrative expenses; and

(c) reserves for anticipated future expenses.

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(3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm, partnership, association, or corporation for the furnishing of services and data for use by the authority in determining the need for and location of any eligible health facility for which application is being made or for such other services or surveys as the authority considers necessary to carry out the purposes of [sections 2 through 26].

Section 21. **Conveyance of title to institution.** When the principal and interest on bonds issued by the authority to finance the cost of eligible health facilities or to refinance outstanding indebtedness of one or more participating health institutions, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same and all other conditions of the resolution, lease, trust indenture, and mortgage or deed of trust or any other form of security arrangement, if any, authorizing and securing the same have been satisfied and the lien of the mortgage or deed of trust or any other form of security arrangement has been released in accordance with the provisions thereof, the authority shall promptly convey its interest in the facilities and any other facilities mortgaged or subject to deed of trust or any other form of security arrangement to secure the bonds to the participating health institution or institutions.

Section 22. **Trust funds.** All money received pursuant to [sections 2 through 26], whether as proceeds from the sale of bonds, notes, or other obligations or as revenues or receipts, are trust funds to be held and applied solely as provided in [sections 2 through 26]. Any officer with whom or any bank or trust company with which such money is deposited shall act as trustee of the money and shall hold and apply it for the purposes of [sections 2 through 26], subject to such regulations as [sections 2 through 26] and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust agreement securing the obligations may provide.

Section 23. **Bonds as legal investment.** (1) Bonds issued by the authority under the provisions of [sections 2 through 26] are securities in which funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) personal representatives, public administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under [sections 2 through 26] are securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is authorized by law.

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Section 24. **Pledge of the state.** In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the authority and the holders of notes and bonds issued by the authority, including but not limited to an agreement to administer a loan program financed by the issuance of bonds, and to employ a staff sufficient and competent for this purpose.

Section 25. **Validity of pledge.** Any pledge made by the authority is valid and binding from the time the pledge is made. The revenue, money, or property pledged and received by the authority is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

Section 26. **Annual audit.** The authority's books and records must be audited at least once each fiscal year, by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the authority's funds.

Section 27. **Initial appointments to authority.** Notwithstanding [section 1], the members of the authority first appointed by the governor shall serve for terms to be designated by the governor and to expire on June 30 of the respective year. The terms of two members shall expire in 1984, two in 1985, and one each in 1986, 1987, and 1988.

Section 28. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 29. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1983.

CHAPTER NO. 704

AN ACT ESTABLISHING AN INVESTMENT CREDIT AGAINST THE INDIVIDUAL INCOME TAX AND THE CORPORATE LICENSE TAX FOR CERTAIN CORPORATIONS FOR TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1982; AMENDING SECTIONS 15-30-162 AND 15-31-123, MCA, AND CHAPTER 520, SECTION 4, LAWS OF 1981; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-162, MCA, is amended to read:

"15-30-162. Investment credit. (1) There is allowed as a credit against the tax imposed by 15-30-103 a percentage of the credit allowed

with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended. *However, rehabilitation costs as set forth under section 46(a)(2)(F) of the Internal Revenue Code of 1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of the following qualifications:*

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana adjusted gross income.

(2) The amount of the credit allowed for the taxable year is *5%* of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended.

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed *the* taxpayer's tax liability for the taxable year *or $500, whichever is less.*

(4) If *property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed. The credit may not be allocated between spouses unless the property is used by a partnership or small business corporation of which they are partners or shareholders.*

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended."

Section 2. Section 15-31-123, MCA, is amended to read:

"15-31-123. Investment credit. (1) The purpose of this section is to allow small businesses to take an investment credit as provided for in subsection (3) and to stimulate capital investment by the small business sector.

(2) For the purposes of this section, "small business" means a business that *does not have:*

(a) more than 10 shareholders;

(b) a person who is not an individual (other than an estate or other than a trust described in 15-31-207) as a shareholder;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock.

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(3) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended. *However, rehabilitation costs as set forth under section 46(a)(2)(F) of the Internal Revenue Code of 1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of the following qualifications:*

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana income.

(4) The amount of the credit allowed for the taxable year is *5%* of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended.

(5) Notwithstanding the provisions of subsection (4), the investment credit allowed for the taxable year may not exceed *$500.*

(6) If *property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed.*

(7) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954, as amended, or as section 47 may be renumbered or amended."

Section 3. Chapter 520, section 4, Laws of 1981, is amended to read:

"**Section 4. Applicability.** This act is applicable only to taxable years beginning after December 31, 1980."

Section 4. **Applicability.** Sections 1 and 2 are applicable to taxable years beginning after December 31, 1982.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1983.

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CHAPTER NO. 705

AN ACT TO APPROVE THE ISSUANCE OF STATE OF MONTANA COAL SEVERANCE TAX BONDS TO FINANCE THE DEVELOPMENT OF CERTAIN STATE HYDROELECTRIC PROJECTS, THE REHABILITATION AND REPAIR OF CERTAIN STATE PROJECTS, AND LOANS TO POLITICAL SUBDIVISIONS AND LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS; TO APPROPRIATE COAL SEVERANCE TAX TRUST PROCEEDS FOR DEBT SERVICE; TO AUTHORIZE THE CREATION OF A STATE DEBT; TO ALLOW THE PRIVATE SALE OF MUNICIPAL REVENUE BONDS TO THE STATE OF MONTANA; AMENDING SECTION 7-7-4433, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose and policy.** (1) The legislature recognizes that it is the policy of the state of Montana to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(2) The legislature recognizes that the development and use of water resources and the efficient, economic distribution thereof are vital to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural, and other beneficial uses.

(3) The legislature reaffirms its previous declaration that the public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and use of water, which construction, operation, and maintenance is a single objective which is in all respects for the welfare and benefit of the people of this state.

(4) The legislature finds that the 1981 legislature, in Chapter 505, Laws of 1981, established a state water development program to provide financial and administrative assistance to private, local, and state entities for water resources development projects and activities.

(5) The legislature finds that 85-1-601 declares that the water development program is an integral part of the implementation and development of the comprehensive, coordinated, multiple-use water resources plan known as the state water plan and that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved water resource development projects and activities as part of the state water development program.

(6) The legislature finds that the following water development projects approved in [sections 3, 4, and 5] will implement the state's policy of full use, conservation, and protection of its water resources:

(a) Department of natural resources and conservation hydroelectric development at Painted Rocks Dam, Broadwater Dam, and Cooney Dam;

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(b) Department of natural resources and conservation repair and rehabilitation at Yellow Water Dam, Cottonwood Dam, and Martinsdale Dam and Reservoir;

(c) Three Forks water system improvement;

(d) Manhattan wastewater treatment system improvement;

(e) Manhattan water system capital improvements;

(f) Roosevelt County rural water system construction;

(g) Culbertson water supply and treatment facility construction;

(h) Geraldine rural water system construction;

(i) South Kremlin-Gildford rural water system construction;

(j) Huntley project irrigation district rehabilitation;

(k) Lower Birch Creek watershed plan;

(l) Ennis sewage treatment construction;

(m) East Bench gravity flow irrigation project;

(n) Bitterroot irrigation district Three Mile farm irrigation measure;

(o) Noxon rural water system improvement;

(p) Belgrade water system improvements;

(q) Columbia Falls water and sewer system improvements;

(r) Conrad water system improvements;

(s) Sage Creek water district;

(t) Shelby sewer system improvements;

(u) Hot Springs sewer system improvements;

(v) Power-Teton County sewer system improvements;

(w) Libby sewer system improvements;

(x) Big Fork sewer system improvements.

Section 2. **Appropriation and creation of debt for coal severance tax bonds.** (1) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond subfund all money necessary for the payment of principal and interest not otherwise provided for on the state of Montana coal severance tax bonds authorized by this act to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the further provisions of [this act].

(2) The legislature, through the enactment of this section, in accordance with Article VIII, section 8, of the Montana constitution authorizes the creation of a state debt in an amount not to exceed $45.35 million for

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the development of the state hydroelectric projects approved in [section 3], in an amount not to exceed $551,900 for the rehabilitation of state water projects approved in [section 4], and in an amount not to exceed $17,044,735 for loans to local government entities for water development projects approved in [section 5], all for the issuance of state of Montana coal severance tax bonds authorized by [this act].

Section 3. **Approval of coal severance tax bonds for state hydroelectric projects — repayment provisions.** (1) The board of examiners may issue state of Montana coal severance tax bonds:

(a) to a maximum amount of $12.9 million for the development of the hydropower potential at the department of natural resources and conservation's Painted Rocks Dam under the authorization granted by the federal energy regulatory commission for project number 4657;

(b) to a maximum amount of $28.6 million for the development of the hydropower potential at the department of natural resources and conservation's Broadwater Dam under authorization pending before the federal energy regulatory commission for project number 2853; and

(c) to a maximum amount of $3.85 million for the development of the hydropower potential at the department of natural resources and conservation's Cooney Dam under an authorization from the federal energy regulatory commission to be applied for pursuant to the preliminary permit issued for project number 4700.

(2) Bonds approved in this section may not be issued by the board of examiners until the board of natural resources and conservation has determined that a project is feasible and has otherwise complied with the requirements of Title 85, chapter 1, part 5, for the development of hydropower at water projects under the control of the department.

(3) The maximum amount of bond revenue for each project approved in this section shall also include all and any relocation, reconstruction, remuneration, or other costs for which the department is legally liable that affect existing irrigation systems, private lands, utility lines, mines, roads, highways, and railroads that are subsequently affected by the development of a respective hydroelectric project.

(4) The hydropower revenues from each project are pledged, dedicated, and appropriated to a special bond account created for that specific project in the sinking fund of the state treasury for the benefit of the bonds approved for that specific project. The board of examiners may allocate a portion of the bond proceeds for a specific project from the bond proceeds and insurance clearance fund account to the special sinking account for that specific project for the payment of interest on the bonds during construction, for the establishment of necessary reserves, and for the operation and maintenance of the hydropower facilities.

(5) In connection with the issuance of bonds, the board of examiners may provide for the operation and maintenance of the hydropower facilities, pay the principal and interest on the bonds when due from each special bond account, create and maintain necessary reserves within each special bond account, and in all other respects manage and use the funds

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within each special bond account for the benefit of the bonds for the particular hydropower project.

(6) The board of examiners shall exercise its discretion to enhance the marketability of the bonds, to secure the most advantageous financial arrangements for the state, and to provide to the extent possible that all costs, including operation and maintenance and debt service, are paid out of project revenues and bond proceeds.

(7) Excess funds in any special sinking account as determined by the board of examiners must be allocated to the water development earmarked account to be used for the purposes set forth in 85-1-604(3)(b).

Section 4. **Approval of coal severance tax bonds for rehabilitation and repair of state water projects — repayment provisions.** (1) The board of examiners may issue state of Montana coal severance tax bonds:

(a) to a maximum amount of $92,000 for repair and rehabilitation of the department of natural resources and conservation's Yellow Water Dam in Petroleum County;

(b) a maximum amount of $201,000 for the repair of the department of natural resources and conservation's Cottonwood Dam in Park County; and

(c) to a maximum amount of $257,000 for the repair and rehabilitation of the department of natural resources and conservation's Martinsdale Dam and Reservoir in Meagher and Wheatland Counties.

(2) Bonds may be issued by the board of examiners after the water users for each project have entered into contractual agreements providing for the repayment of the cost of repair and rehabilitation at a rate of interest equal to that which must be paid on bonds issued pursuant to [this section]. The repayment money from each project is pledged, dedicated, and appropriated to a special bond account in the sinking fund of the state treasury for the benefit of the bonds approved for such project.

(3) In connection with the issuance of bonds, the board of examiners may pay the principal and interest on the bonds when due from the special bond account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(4) Earnings on bond proceeds prior to the completion of any loan shall be allocated to the special bond account to pay interest on the bonds during this period. Earnings in excess of bond interest, if any, shall be allocated to the water development earmarked account and may be used for the purposes allowed under 85-1-604(3)(b).

Section 5. **Authorization of coal severance tax bond loans to government entities.** The board of examiners may issue state of Montana coal severance tax bonds in an amount not to exceed $17,044,735 for

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the purpose of making the loans set forth in [section 6] from the bond proceeds to political subdivisions and local government entities and for the purpose of paying the cost of issuance of the bonds.

Section 6. **Political subdivision projects.** (1) The bonds authorized under [section 5] may be issued as follows:

(a) (i) Bonds to a maximum amount of $1,100,000 may be issued for a loan to the city of Three Forks for the purpose of financing improvements in the city's water system.

(ii) The project, which will rehabilitate existing components of the city water system and change the source of the water supply from the Madison River drainage to the Jefferson River drainage, is needed to resolve the health hazard in the city's existing water supply caused by excessive levels of arsenic.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(b) (i) Bonds to a maximum amount of $130,000 may be issued for a loan to the city of Manhattan for the purpose of financing improvements in the city's wastewater treatment system.

(ii) The project is needed because the existing city wastewater stabilization ponds provide inadequate treatment to meet future effluent limitations.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(c) (i) Bonds to a maximum amount of $170,000 may be used for a loan to the city of Manhattan for the purpose of financing capital improvements in the city's water system.

(ii) The project is needed for promotion of conservation of water by encouraging city water customers to use less water and for rehabilitation of the water system.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(d) (i) Bonds to a maximum amount of $1,790,000 may be issued for a loan to the Roosevelt County rural water district for the purpose of financing construction of a proposed water distribution system for domestic and stock use for eastern Roosevelt County.

(ii) The project is needed to supply water to those residents of the county who must haul water because of poor quality ground water and to prevent health problems caused by consumption of poor quality water.

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(iii) The loan must be repaid at a 6 ½% interest rate.

(e) (i) Bonds to a maximum amount of $704,000 may be issued for a loan to the town of Culbertson for the purpose of financing the construction of a water supply and treatment facility for the town.

(ii) The project is needed to prevent health problems associated with poor water quality through the use of more sophisticated water treatment methods and to increase the town's capacity to service present and future users with safe, potable water.

(iii) The loan must be repaid at a 5% interest rate.

(f) (i) Bonds to a maximum amount of $1,733,200 may be issued for a loan to the Geraldine rural county water district for the purpose of the development of a rural water system in the Geraldine area.

(ii) The project is needed to alleviate the situation caused by poor quality ground water in the area. The majority of the area's residents must haul both domestic and stock water.

(iii) The loan must be repaid at a 6 ½% interest rate.

(g) (i) Bonds to a maximum amount of $336,035 may be issued for a loan to the South Kremlin-Gildford water district for the purpose of the development of a rural water system in an area where ground water is of insufficient quantity and quality.

(ii) The project is needed to alleviate the health and economic problems caused by the lack of potable ground water. At present most residents must haul both domestic and stock water.

(iii) The loan must be repaid at a 6 ½% interest rate.

(h) (i) Bonds to a maximum amount of $162,000 may be issued for a loan to the Huntley project irrigation district for the purpose of rehabilitation of the project.

(ii) The project is needed to improve the performance of the water supply system and to ensure the availability of sufficient water for irrigation.

(iii) The loan must be repaid at a 6% interest rate.

(i) (i) Bonds to a maximum amount of $555,000 may be issued for a loan to the Pondera soil conservation district for the purpose of partial financing of the Lower Birch Creek watershed plan.

(ii) The watershed plan is needed to solve the area's irrigation water shortage problem by stabilizing and improving the major supply features of the system and to ensure an adequate water supply to the nearby city of Conrad.

(iii) The loan must be repaid at a 6% interest rate.

(j) (i) Bonds to a maximum amount of $180,000 may be issued for a loan to the city of Ennis for the purpose of financing, in part, sewage treatment construction.

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(ii) The project is needed to build an additional sewage settling cell in the city of Ennis because the present sewage treatment system is inadequate to meet the demands of the city's rising population and is not in compliance with federal standards.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(k) (i) Bonds may be issued for the purpose of a loan to the East Bench gravity flow project to provide financing to the project in accordance with subsection (ii) or (iii) of this subsection (k).

(ii) If the application for federal aid for the East Bench gravity flow project is not approved by August 1, 1983, bonds may be issued in an amount not to exceed $3,230,000 to finance a loan to the East Bench irrigation district. This loan must be repaid at a 3% interest rate.

(iii) If the application for federal aid for the East Bench gravity flow project is approved by August 1, 1983, bonds may be issued for the difference between a total project cost of $4,383,000 and the total amount of federal aid received by the project to finance a loan to the East Bench gravity company. This loan must be repaid at a 3% interest rate.

(iv) This project is needed to alleviate low pressure problems at the lower end of the project and to eliminate pumping costs.

(v) Remaining funds from the appropriation in House Bill 709 of the 47th Legislature for the East Bench irrigation project are reappropriated for the project for the biennium ending June 30, 1985.

(l) (i) Bonds to a maximum amount of $1,180,000 may be issued for a loan to the Bitterroot irrigation district for the purpose of financing, in part, the Three Mile farm irrigation measure, involving conversion of the irrigation system serving the area from pumped to gravity sprinkler irrigation.

(ii) This project is needed to alleviate present water shortages to reduce the cost of irrigation and to conserve water.

(iii) The loan must be repaid at a 3% interest rate.

(m) (i) Bonds to a maximum of $122,000 may be issued for a loan to the Noxon rural improvement district for the purpose of financing rehabilitation of the community's water system.

(ii) The project is needed because the present wooden lines have leakage problems and contamination is being drawn into the distribution system causing a health hazard.

(iii) The loan must be repaid at a 5% interest rate.

(n) (i) Bonds to a maximum amount of $1,235,000 may be issued for a loan to the city of Belgrade for the purpose of financing improvements in the city's water system.

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(ii) The project, which will rehabilitate existing components of the city water system, construct an additional well to supply the water system, and install residence meters, is needed to meet the demands of the city's growing population and to conserve the available water for future use.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(o) (i) Bonds to a maximum amount of $200,000 may be issued for a loan to the city of Columbia Falls for the purpose of partially financing improvements to city water and sewer lines.

(ii) The project is needed to replace existing water and sewer lines with new larger lines and because of the reconstruction of highway 2 in the area where the lines are located.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(p) (i) Bonds to a maximum amount of $500,000 may be issued for a loan to the city of Conrad for the purpose of financing improvements in the city's water system.

(ii) The project, which will replace a transmission line from the existing treatment plant to the distribution system, is needed because the existing steel pipe transmission has numerous breaks and has deteriorated to the extent that it cannot provide a reliable supply of water to the city.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(q) (i) Bonds to a maximum amount of $750,000 may be issued for a loan to the Sage Creek water district, if that district is formed prior to the sale of bonds pursuant to this act, for the purpose of financing construction of a rural water supply system for northern Liberty and Hill Counties.

(ii) The project is needed because residents of the area now must haul domestic water because of the scarcity and poor quality of ground water, and it is probable that they will have to haul stock water in the future.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(r) (i) Bonds to a maximum amount of $592,000 may be issued for a loan to the city of Shelby for the purpose of partially financing rehabilitation of the city's sewer system.

(ii) The project is needed to replace pipes that have deteriorated because of age and that are inadequate in size to serve the population of Shelby.

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(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(s) (i) Bonds to a maximum amount of $182,000 may be issued for a loan to the town of Hot Springs for the purpose of sewer system improvements.

(ii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(t) (i) Bonds to a maximum amount of $200,000 may be issued for a loan to the Power-Teton water and sewer district for the purpose of partially financing improvements to the town of Power's sewer system.

(ii) The project is needed to install a collection and treatment facility to address the present health hazard and pollution problem.

(iii) The loan must be repaid at a 7% interest rate. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(u) (i) Bonds to a maximum amount of $590,500 may be issued for a loan to the city of Libby for the purpose of partially financing construction of a secondary sewage treatment plant for the city.

(ii) The project is needed because the city's present sewage treatment system is not in compliance with public health standards.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(v) (i) Bonds to a maximum amount of $250,000 may be issued for a loan to the city of Big Fork for the purpose of partially financing rehabilitation of the city's sewage treatment plant.

(ii) The project is needed because the existing treatment plant is inadequate to meet the needs of the city and, as a result, poor quality effluent is being discharged by the system.

(iii) The loan must be repaid at a 7% interest rate for the first 5 years following loan issuance and at the full bond rate thereafter. A pro rata share, based on the amount of the loan, of the incurred administrative costs must be repaid.

(2) Loan repayments, both loan principal, fixed bond sale costs, and interest, are pledged, dedicated, and appropriated to a special bond account in the sinking fund of the state treasury for the benefit of bonds approved for loans under this section. Repayment, both principal and interest, of incurred administrative cost must be made to the water development earmarked account created in 85-1-604 to be reused for the administration of the water development loan and grant program. The interest

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rates applicable to any of the projects listed in [this section] shall be the lower of the specified rate cited for each project or the rate that must be paid on bonds issued pursuant to [section 5].

(3) In connection with the issuance of bonds, the board of examiners may pay the principal and interest on the bonds when due from the special bond account and in all other respects manage and use the funds within the special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(4) Earnings on bond proceeds prior to the completion of any loan must be allocated to the special bond account to pay interest on the bonds during this period. Earnings in excess of bond interest, if any, must be allocated to the water development earmarked account and may be used for the purposes allowed under 85-1-604(3)(c).

(5) (a) The legislature's approval of loans for projects listed in this section is subject to the recipient's provision to the board of examiners of information and material necessary for the purposes of completion of contractual agreements and for bond sale purposes. This information and material must be provided on a schedule that will allow bond sale schedules to be met. Prior to the issuance of the bonds, the department of natural resources and conservation shall review the projects to determine their technical and financial feasibility and report to the board of examiners. The loans are conditioned upon compliance with the requirements of this subsection (5) meeting the approval of the board of examiners and upon such other conditions the board of examiners may impose that are necessary for the completion of contractual agreements and for bond sale purposes.

(b) Loans for projects listed in this section are subject to the approval of the governing body of the political subdivision.

Section 7. Section 7-7-4433, MCA, is amended to read:

"7-7-4433. Sale of bonds. (1) Bonds authorized to be issued under this part shall be sold at not less than par.

(2) (a) Said bonds may be sold at private sale to the United States *or the state of Montana* or any agency, instrumentality, or corporation thereof.

(b) Unless sold to the United States *or the state of Montana* or *an* agency, instrumentality, or corporation thereof, said bonds shall be sold at public sale after notice of such sale."

Section 8. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Effective date.** This act is effective on passage and approval.

Approved April 30, 1983.

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CHAPTER NO. 706

AN ACT PROVIDING FOR THE AMENDMENT AND STUDY OF THE LAWS RELATED TO THE ACQUISITION, TRANSPORTATION, AND USE OF WATER; AMENDING SECTIONS 85-1-205 AND 85-2-311, MCA; REPEALING SECTION 85-1-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-205, MCA, is amended to read:

"**85-1-205. Acquisition of water in federal reservoirs.** *(1)* The department may acquire water *or water storage* by purchase option or agreement with the federal government from *any federal reservoir* for the purpose of sale, rent, or distribution for industrial *and other uses.* In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate, *except as provided in subsection (2).*

(2) Until a final decree has been issued pursuant to 85-2-234 concerning the waters in a federal reservoir, the department may sell, rent, or distribute such water only after a permit has been issued to an applicant for purchase, rent, or distribution of water in accordance with part 3 of this chapter."

Section 2. Section 85-2-311, MCA, is amended to read:

"**85-2-311. Criteria for issuance of permit.** *(1) Except as provided in subsections (2) and (3), the* department shall issue a permit if *the applicant proves by substantial credible evidence that the following criteria are met:*

(a) there are unappropriated waters in the source of supply:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

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(2) (a) The department may not issue a permit for an appropriation of 10,000 or more acre-feet of water a year or 15 or more cubic feet per second of water unless it affirmatively finds:

(i) the criteria in subsection (1) are met;

(ii) the applicant has proven by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected;

(iii) the proposed appropriation is a reasonable use. Such a finding shall be based on a consideration of the following:

(A) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(B) the benefits to the applicant and the state;

(C) the economic feasibility of the project;

(D) the effects on the quantity, quality, and potability of water for existing beneficial uses in the source of supply;

(E) the effects on private property rights by any creation of or contribution to saline seep; and

(F) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(b) A permit for an appropriation for a diversion for a consumptive use of 10,000 or more acre-feet of water a year or 15 or more cubic feet per second of water under this subsection may not be issued unless the department petitions the legislature and the legislature affirms the findings of the department.

(3) An appropriation, diversion, impoundment, restraint, or attempted appropriation, diversion, impoundment, or restraint contrary to the provisions of this section is null and void. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section."

Section 3. **Repealer.** Section 85-1-121, MCA, is repealed.

Section 4. **Study of water marketing.** (1) There is a select committee on water marketing. The select committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The select committee shall meet as often as necessary to complete the study of water marketing required under this section.

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(2) The select committee on water marketing shall undertake a study of the economic, tax, administrative, legal, social, and environmental advantages and disadvantages of water marketing.

(3) The select committee shall study the desirability and feasibility of in-state and out-of-state marketing of limited amounts of water for industrial purposes from existing state and federal reservoirs and from proposed reservoirs with water reservations.

(4) The study must include:

(a) the present and future in-state demands for water for domestic, municipal, agricultural, industrial, recreational, in-stream flows, and other beneficial uses;

(b) how best to encourage a negotiated resolution of the conflicting demands of water users within the Missouri River basin and to discourage litigation and congressional action initiated by lower basin states;

(c) the potential effects of a coal slurry pipeline on coal production and the economic and environmental effects of increased coal production;

(d) the effects of a coal slurry pipeline on the railroad industry and rail rates for noncoal shippers;

(e) alternative structures for a water marketing program;

(f) alternative uses of revenue derived from water marketing; and

(g) the potential ecological effects of the installation and operation of coal slurry pipelines.

(5) The select committee shall solicit the advice of the department of natural resources and conservation, various interested industries, conservation groups, appropriate state and federal agencies, and the public in carrying out its duties under this section.

(6) The environmental quality council shall provide staff assistance to the select committee. The select committee may contract with experts and consultants, in addition to assistance from the environmental quality council staff, in carrying out its duties under this section.

(7) The select committee shall report its findings and recommendations for legislation, if any, to the 49th legislature.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date.** This act is effective on passage and approval.

Section 7. **Termination date.** This act terminates July 1, 1985.

Approved April 29, 1983.

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CHAPTER NO. 707

AN ACT TO EARMARK A PORTION OF THE OIL SEVERANCE TAX FOR THE LOCAL GOVERNMENT BLOCK GRANT ACCOUNT; AMENDING SECTIONS 15-1-501 AND 15-36-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of moneys from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of:

(a) automobile driver's license fees under subsections (1) through (6) of 61-5-111;

(b) electric energy producer's license taxes under chapter 51;

(c) metalliferous mines license taxes under chapter 37;

(d) severance taxes allocated to the general fund under chapter 36;

(e) liquor license taxes under Title 16;

(f) telephone license taxes under chapter 53; and

(g) inheritance and estate taxes under Title 72, chapter 16.

(2) Seventy-five percent of all moneys received from the collection of income taxes under chapter 30 and corporation license and income taxes under chapter 31, except as provided in 15-31-702, shall be deposited in the general fund subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining 25% of the proceeds of the corporation license tax, excluding that allocated to the counties under 15-31-702, corporation income tax, and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana.

(3) The state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(4) Thirty-three and one-third percent of the total collections of the oil severance tax under chapter 36 shall be deposited into the local government block grant account within the earmarked revenue fund. After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections shall be deposited in the general fund."

Section 2. Section 15-36-112, MCA, is amended to read:

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"**15-36-112. Disposition of oil and gas severance taxes.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each county.

(2) The severance taxes collected under this chapter are allocated as follows:

(a) 33 ⅓% of the oil severance tax, not to exceed $42 million for the biennium ending June 30, 1985, is deposited in the local government block grant account within the earmarked revenue fund;

(b) the amount, if any, by which the tax collected from within a county for any fiscal year exceeds the total amount collected from within that county for the previous fiscal year, by reason of increased production and not because of increase in or elimination of federal price ceilings on oil and gas, is allocated to the general fund of the county for distribution as provided in subsection (3);

(c) any amount not allocated to the *local government block grant account or the* county under subsection (2)(a) *or (2)(b)* is allocated to the state general fund.

(3) (a) The county treasurer shall distribute the money received under *subsection (2)(b) of* this section to the county and to all the incorporated cities and towns within the county in the following manner. The county receives the available money multiplied by the ratio of the rural population to the county population. Each incorporated municipality receives the available money multiplied by the ratio of the population of the incorporated municipality to the county population. The rural population is that population of the county living outside the boundaries of an incorporated municipality. Population shall be based on the most recent figures as determined by the department of administration.

(b) The money distributed under this subsection may be used for any purpose as determined by the governing body of the county, city, or town."

Section 3. **Effective date.** This act is effective July 1, 1983, and is applicable to all severance taxes collected after June 30, 1983.

Approved May 2, 1983.

CHAPTER NO. 708

AN ACT ESTABLISHING A LOCAL GOVERNMENT BLOCK GRANT PROGRAM PROVIDING FINANCIAL ASSISTANCE TO MUNICIPALITIES AND COUNTIES IN MONTANA; PROVIDING A METHOD FOR DISTRIBUTION OF THE FUNDS; DESIGNATING THE DEPARTMENT OF COMMERCE AS THE ADMINISTERING AGENCY; APPROPRIATING MONEY TO THE LOCAL GOVERNMENT BLOCK GRANT ACCOUNT; AMENDING SECTION 61-3-536, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "County" means any county government, excluding those classified as consolidated governments.

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(2) "Incorporated population" means the number of persons residing within the boundaries of a municipality.

(3) "Jurisdiction" means all city, town, county, and consolidated governments; all other municipal taxing districts; school districts; and the state.

(4) "Mill value" means the amount of revenue that can be raised within a jurisdiction by levying 1 mill. It is determined by multiplying a jurisdiction's taxable valuation by .001.

(5) "Municipality" means an incorporated city, town, or city-county consolidated government.

(6) "Unincorporated population" means the number of persons not residing within a municipality.

Section 2. **Local government block grant account created — source of funds.** (1) There is a local government block grant account within the earmarked revenue fund.

(2) Funds in this account must be used to provide payments from the local government block grant program to eligible jurisdictions.

(3) Thirty-three and one-third percent of the oil severance tax collected under the provisions of 15-36-101 and all funds appropriated to the account must be deposited in the account.

Section 3. **Local government block grant program.** (1) The department of commerce shall administer the local government block grant program and distribute funds from the local government block grant account.

(2) The local government block grant program is comprised of three parts:

(a) a general purpose block grant for municipalities, counties, school districts, and other jurisdictions;

(b) a general services block grant for counties; and

(c) a general services block grant for municipalities.

Section 4. **Division of block grant funds.** The division of funds within the local government block grant account is as follows:

(1) Except as provided in [section 9(1)], the general purpose block grant for municipalities, counties, school districts, and other jurisdictions must be funded, before any other distributions are made from the account, in an amount sufficient to cover the reimbursements required by 61-3-536.

(2) (a) The general services block grant for counties must be funded from a percentage of the remaining funds deposited in the account equal to the ratio of the unincorporated population to the state population.

(b) The general services block grant for municipalities must be funded from a percentage of the remaining funds deposited in the account equal to the ratio of the incorporated population to the total state population.

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Section 5. **Distribution of general purpose block grant funds.** The general purpose block grant for municipalities, counties, school districts, and other jurisdictions must be distributed by the state to counties pursuant to 61-3-536 and by counties to other jurisdictions pursuant to 61-3-509.

Section 6. **Distribution of general services block grant funds to counties.** Funds in the general services block grant for counties must be distributed as follows:

(1) One-half of each county's share is determined by the ratio of the county's population to the total county population in the state.

(2) The remaining one-half is distributed according to the following formula where CMV = average mill value per capita of all counties; IMV = individual county mill value per capita; ICP = individual county population; CG = ½ total county grant:

$$\frac{CMV}{IMV} \times ICP = \text{county tax base factor (TBF)}$$

$$CG \times \frac{\text{individual county TBF}}{\text{sum of all county TBFs}} = \tfrac{1}{2}\text{ individual county share}$$

Section 7. **Distribution of general services block grant funds to municipalities.** (1) The general services block grant for municipalities is divided into the city/town category and the consolidated category.

(2) The consolidated category shall receive a percentage of the total municipal grant as determined by the following formula where PCG = population of consolidated governments; UP = unincorporated population; TSP = total state population; and TSMP = total state municipal population:

$$\frac{PCG + (PCG \times UP/TSP)}{TSMP} = \text{consolidated category percentage}$$

(3) The city/town category shall receive the remainder of the general services grant for municipalities.

(4) Funds for both the city/town and consolidated categories must be distributed as follows:

(a) One-half of each municipality's share is determined by the ratio of the municipality's population to the total municipal population of that category.

(b) The remaining one-half is distributed according to the following formula where MVPC = average mill value per capita for all municipalities within each category; IVC = individual municipal mill value per capita; IMP = individual municipal population; CG = ½ total grant for each category:

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$$\frac{\text{MVPC}}{\text{IVC}} \times \text{IMP} = \text{municipal tax base factor (TBF)}$$

$$\text{CG} \times \frac{\text{individual municipal TBF}}{\text{sum of all municipal TBFs}} = \tfrac{1}{2} \text{ individual municipality's share}$$

Section 8. **Population and taxable valuation figures to be used.** (1) Population figures used in [sections 4, 6, and 7] must be the most recent figures as determined by the department of commerce.

(2) Mill values used in [sections 4, 6, and 7] are the most recent taxable valuation figures as determined by the department of revenue for the fiscal year in which payments will be made.

Section 9. **Disposition and use of funds.** Disbursements from the local government block grant account shall be made as follows:

(1) On October 1, 1983, a disbursement must be made from the general services block grant that is the lesser of:

(a) $2 million; or

(b) one-third of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(2) On March 1, 1984, and March 1 of each succeeding year the reimbursement required by 61-3-536 must be distributed.

(3) On June 30, 1984, a disbursement must be made from the general services block grants for municipalities and counties that equals the amount which is the lesser of the difference between the account balance on that date and:

(a) $3 million dollars; or

(b) one-half of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(4) On June 30, 1985, and June 30 of each succeeding year, all funds remaining in the account must be distributed.

(5) The funds distributed by [this act] may be used for any purpose authorized by law.

Section 10. Section 61-3-536, MCA, is amended to read:

"61-3-536. State aid for local government. (1) Each county treasurer shall compute:

(a) the total amount received during the period from January 1, 1981, to December 31, 1981, for property taxes on automobiles and trucks having a rated capacity of three-quarters of a ton or less, denoted CT;

(b) the total amount that would have been received during the same period if the license fee system had been in effect, denoted CF; and

(c) the number of light vehicles registered in the county on December 31, 1981, denoted NC.

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(2) The three quantities, CT, CF, and NC, shall be certified to the department of revenue by February 1, 1982. The department shall compute for each county a quantity called county revenue loss, denoted CRL, and county loss per vehicle, denoted CLV, and defined as follows:

(a) CRL = larger of:

(i) 0; or

(ii) CT - CF;

(b) CLV = CRL/NC.

(3) Prior to February 1 of year denoted Y, the county treasurer shall determine and certify to the department the number of light vehicles registered in the county on December 31 of the prior year, denoted NC(Y). *Prior to March 1 of year Y, the department of revenue shall transmit to the department of commerce the amount of CLV x NC(Y) for each county.*

(4) On March 1 of year Y, the department *of commerce* shall transmit to each county treasurer a warrant in the amount of CLV x NC(Y).

(5) Upon receipt of the payment provided for in subsection (4), the county treasurer shall credit the payment to a motor vehicle suspense fund and, at some time between March 15 and March 30, shall distribute the payment in the same manner as funds are distributed to the taxing jurisdictions as provided in 61-3-509."

Section 11. **Appropriation.** There is appropriated from the general fund to the local government block grant account $3 million for the biennium ending June 30, 1985.

Section 12. **Effective date.** This act is effective July 1, 1983.

Approved May 2, 1983.

CHAPTER NO. 709

AN ACT CREATING A DISPLACED HOMEMAKER PROGRAM AND PROVIDING FOR AN APPROPRIATION; AMENDING SECTION 25-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature finds that there is an increasing number of persons in the state who, being in their middle years and having fulfilled the role of homemaker, find themselves displaced because of dissolution of marriage, death or disability of spouse, or other loss of family income; and

WHEREAS, the Legislature finds that displaced homemakers have a greatly reduced income and a high rate of unemployment due to age, education, or lack of paid work experience and are likely to be ineligible for Social Security benefits, Unemployment Compensation, Medicaid, and other health insurance benefits or pension plans of the spouse; and

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WHEREAS, the Legislature finds that homemakers are an unrecognized part of the work force who make an invaluable contribution to the welfare of society as a whole.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 10] may be cited as the "Displaced Homemaker Act".

Section 2. **Purpose.** It is the intent of the legislature to provide necessary counseling, training, jobs, services, and health care for displaced homemakers so they may achieve independence and the economic security vital to a productive life.

Section 3. **Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(2) "Displaced homemaker" means an individual who:

(a) has worked in the home for at least 3 years providing unpaid household services for family members;

(b) is not gainfully employed or is underemployed;

(c) has had or would have difficulty securing paid employment; and

(d) was dependent on the income of another family member but is no longer supported by such income, was dependent on federal assistance but is no longer eligible for such assistance, or whose eligibility for such federal assistance will be terminated within 6 months.

Section 4. **Multipurpose service programs for displaced homemakers — administrators.** (1) The commissioner may establish multipurpose service programs for displaced homemakers and may enter into contracts with and make grants to nonprofit agencies or organizations, public or private, to establish, organize, and administer the programs described in [section 5].

(2) The commissioner shall contract with an administrator for each program.

Section 5. **Programs to aid displaced homemakers.** (1) The programs must be developed in cooperation with federal, state, and local agencies and with private employers in order to coordinate efforts directed toward enabling the displaced homemaker to maintain economic security and emotional well-being and to avoid unnecessary duplication of services.

(2) The services may include but are not limited to:

(a) job counseling services that are:

(i) specifically designed for displaced homemakers by taking into account and building upon their skills and experiences; and

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(ii) operated to counsel displaced homemakers with respect to appropriate job opportunities;

(b) job training and job placement services that:

(i) include training and placement programs for jobs in the public and private sectors;

(ii) assist displaced homemakers in gaining admission to existing public or private job training and educational programs; and

(iii) assist in identifying community needs and creating new jobs in the public and private sectors;

(c) referral to or development of programs for displaced homemakers in cooperation with local agencies that provide information and assistance with respect to health care, financial matters, education, nutrition, and legal problems;

(d) support services, such as:

(i) child care for preschool children;

(ii) transportation assistance; and

(iii) grants for education; and

(e) development of outreach programs to serve rural areas where needs for such programs have been identified.

Section 6. **Rulemaking duties of commissioner.** The commissioner, with the advice of other organizations and agencies who provide services to displaced homemakers, shall adopt rules:

(1) concerning the eligibility of persons who may be served by the program;

(2) concerning a graduated fee schedule for program services;

(3) concerning criteria for making grants as provided for in [section 4]; and

(4) necessary to carry out the provisions of [sections 1 through 10].

Section 7. **Acceptance of funds by administrator of local program.** The administrator of the local displaced homemaker program may accept, use, and dispose of all grants or contributions of money, services, and property for the purpose of carrying out the provisions of [sections 1 through 10]. Such grants or contributions may include grants or in-kind contributions from a local governmental unit.

Section 8. **Evaluation of multipurpose service programs — reports to the commissioner.** The administrator of each designated program established under [sections 1 through 10] shall report annually to the commissioner as prescribed by rule, which report must include:

(1) an evaluation of the effectiveness of the program's job counseling, training, placement referral, support, and outreach services to displaced homemakers; and

(2) an accounting of all expenditures.

Section 9. **Staff of service programs.** To the extent possible, supervisory, technical, and administrative positions in the multipurpose service programs must be filled by displaced homemakers.

Section 10. **Partial funding from local community.** Fifteen percent of the operational costs of a local displaced homemaker program must

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come from the local community served by the program. The local contribution may include in-kind contributions.

Section 11. Section 25-1-201, MCA, is amended to read:

"25-1-201. Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, from the plaintiff or petitioner, $20; for filing a complaint in intervention, from the intervenor, $20; *and for filing a petition for dissolution of marriage, an additional fee of $25*;

(b) from each defendant or respondent, on his appearance, $10;

(c) on the entry of judgment, from the prevailing party, $10;

(d) for preparing copies of papers on file in his office, 25 cents per page;

(e) for each certificate, with seal, 50 cents;

(f) for oath and jurat, with seal, 50 cents;

(g) for administering oath, 25 cents;

(h) for taking depositions, per folio, 20 cents;

(i) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $5;

(j) for issuing an execution or order of sale on a foreclosure of a lien, $2;

(k) for transmission of records or files or transfer of a case to another court, $5;

(l) for filing and entering papers received by transfer from other courts, $10;

(m) for issuing a marriage license, $30;

(n) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for filing a will for probate.

(2) Except as provided in subsection (3), 40% of all fees collected by the clerk of the district court *must* be deposited in and credited to the general fund of the county. The remaining portion of the fees *must* be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) The additional fee for filing a petition for dissolution of marriage must be deposited in the state general fund."

Section 12. **Appropriation.** There is appropriated from the general fund to the department of labor and industry the sum of $250,000 for the biennium ending June 30, 1985, to fund the displaced homemaker program.

Section 13. **Effective date.** This act is effective July 1, 1983.

Approved May 16, 1983.

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CHAPTER NO. 710

AN ACT ESTABLISHING STATE EMPLOYEE COMPENSATION PLANS AND BENEFIT LEVELS; PROVIDING PAY SCHEDULES FOR FISCAL YEARS 1984 AND 1985; APPROPRIATING FUNDS THEREFOR; AMENDING SECTIONS 2-18-106, 2-18-301, 2-18-303 THROUGH 2-18-305, 2-18-311, AND 2-18-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-311, MCA, is amended to read:

"2-18-311. Statewide pay schedule for fiscal year 1984. *The statewide classification pay schedule for fiscal year 1984 is as follows:*

Annual Hours — 2080 *Note: Includes Insurance*
Pay Matrix — State *Matrix Type — Annual*

STEP

GRADE	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*	*12*	*13*
1	*8,554*	*9,111*	*9,293*	*9,479*	*9,669*	*9,862*	*10,059*	*10,260*	*10,465*	*10,674*	*10,887*	*11,105*	*11,494*
2	*9,033*	*9,621*	*9,813*	*10,009*	*10,209*	*10,413*	*10,621*	*10,833*	*11,050*	*11,271*	*11,496*	*11,726*	*12,136*
3	*9,555*	*10,177*	*10,381*	*10,589*	*10,801*	*11,017*	*11,237*	*11,462*	*11,691*	*11,925*	*12,164*	*12,407*	*12,841*
4	*10,124*	*10,783*	*10,999*	*11,219*	*11,443*	*11,672*	*11,905*	*12,143*	*12,386*	*12,634*	*12,887*	*13,145*	*13,605*
5	*10,751*	*11,452*	*11,681*	*11,915*	*12,153*	*12,396*	*12,644*	*12,897*	*13,155*	*13,418*	*13,686*	*13,960*	*14,449*
6	*11,439*	*12,185*	*12,429*	*12,678*	*12,932*	*13,191*	*13,455*	*13,724*	*13,998*	*14,278*	*14,564*	*14,855*	*15,375*
7	*12,202*	*12,998*	*13,258*	*13,523*	*13,793*	*14,069*	*14,350*	*14,637*	*14,930*	*15,229*	*15,534*	*15,845*	*16,400*
8	*13,024*	*13,874*	*14,151*	*14,434*	*14,723*	*15,017*	*15,317*	*15,623*	*15,935*	*16,254*	*16,579*	*16,911*	*17,503*
9	*13,937*	*14,847*	*15,144*	*15,447*	*15,756*	*16,071*	*16,392*	*16,720*	*17,054*	*17,395*	*17,743*	*18,098*	*18,731*
10	*14,937*	*15,913*	*16,231*	*16,556*	*16,887*	*17,225*	*17,570*	*17,921*	*18,279*	*18,645*	*19,018*	*19,398*	*20,077*
11	*16,030*	*17,077*	*17,419*	*17,767*	*18,122*	*18,484*	*18,854*	*19,231*	*19,616*	*20,008*	*20,408*	*20,816*	*21,545*
12	*17,239*	*18,366*	*18,733*	*19,108*	*19,490*	*19,880*	*20,278*	*20,684*	*21,098*	*21,520*	*21,950*	*22,389*	*23,173*
13	*18,555*	*19,769*	*20,164*	*20,567*	*20,978*	*21,398*	*21,826*	*22,263*	*22,708*	*23,162*	*23,625*	*24,098*	*24,941*
14	*20,175*	*21,496*	*21,926*	*22,365*	*22,812*	*23,268*	*23,733*	*24,208*	*24,692*	*25,186*	*25,690*	*26,204*	*27,121*
15	*21,865*	*23,296*	*23,762*	*24,237*	*24,722*	*25,216*	*25,720*	*26,234*	*26,759*	*27,294*	*27,840*	*28,397*	*29,391*
16	*23,760*	*25,316*	*25,822*	*26,338*	*26,865*	*27,402*	*27,950*	*28,509*	*29,079*	*29,661*	*30,254*	*30,859*	*31,939*
17	*25,813*	*27,504*	*28,054*	*28,615*	*29,187*	*29,771*	*30,366*	*30,973*	*31,592*	*32,224*	*32,868*	*33,525*	*34,698*
18	*28,080*	*29,920*	*30,518*	*31,128*	*31,751*	*32,386*	*33,034*	*33,695*	*34,369*	*35,056*	*35,757*	*36,472*	*37,749*
19	*30,572*	*32,576*	*33,228*	*33,893*	*34,571*	*35,262*	*35,967*	*36,686*	*37,420*	*38,168*	*38,931*	*39,710*	*39,710*
20	*33,292*	*35,475*	*36,185*	*36,909*	*37,647*	*38,400*	*39,168*	*39,951*	*40,750*	*41,565*	*42,396*	*42,396*	*42,396*
21	*36,286*	*38,665*	*39,438*	*40,227*	*41,032*	*41,853*	*42,690*	*43,544*	*44,415*	*45,303*	*45,303*	*45,303*	*45,303*
22	*39,570*	*42,165*	*43,008*	*43,868*	*44,745*	*45,640*	*46,553*	*47,484*	*48,434*	*48,434*	*48,434*	*48,434*	*48,434*
23	*43,163*	*45,995*	*46,915*	*47,853*	*48,810*	*49,786*	*50,782*	*51,798*	*51,798*	*51,798*	*51,798*	*51,798*	*51,798*
24	*47,111*	*50,203*	*51,207*	*52,231*	*53,276*	*54,342*	*55,429*	*55,429*	*55,429*	*55,429*	*55,429*	*55,429*	*55,429*
25	*51,449*	*54,825*	*55,922*	*57,040*	*58,181*	*59,345*	*59,345*	*59,345*	*59,345*	*59,345*	*59,345*	*59,345*	*59,345"*

Section 2. **Statewide pay schedule for fiscal year 1985.** The statewide classification pay schedule for fiscal year 1985 is as follows:

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Annual Hours — 2080
Pay Matrix — State

Note: Includes Insurance
Matrix Type — Annual

	STEP												
GRADE	1	2	3	4	5	6	7	8	9	10	11	12	13
1	8,713	9,369	9,556	9,747	9,942	10,141	10,344	10,551	10,762	10,977	11,197	11,421	11,878
2	9,195	9,887	10,085	10,287	10,493	10,703	10,917	11,135	11,358	11,585	11,817	12,053	12,535
3	9,719	10,451	10,660	10,873	11,090	11,312	11,538	11,769	12,004	12,244	12,489	12,739	13,249
4	10,292	11,067	11,288	11,514	11,744	11,979	12,219	12,463	12,712	12,966	13,225	13,490	14,030
5	10,924	11,746	11,981	12,221	12,465	12,714	12,968	13,227	13,492	13,762	14,037	14,318	14,891
6	11,616	12,490	12,740	12,995	13,255	13,520	13,790	14,066	14,347	14,634	14,927	15,226	15,835
7	12,383	13,315	13,581	13,853	14,130	14,413	14,701	14,995	15,295	15,601	15,913	16,231	16,880
8	13,210	14,204	14,488	14,778	15,074	15,375	15,683	15,997	16,317	16,643	16,976	17,316	18,009
9	14,129	15,192	15,496	15,806	16,122	16,444	16,773	17,108	17,450	17,799	18,155	18,518	19,259
10	15,135	16,274	16,599	16,931	17,270	17,615	17,967	18,326	18,693	19,067	19,448	19,837	20,630
11	16,233	17,455	17,804	18,160	18,523	18,893	19,271	19,656	20,049	20,450	20,859	21,276	22,127
12	17,450	18,763	19,138	19,521	19,911	20,309	20,715	21,129	21,552	21,983	22,423	22,871	23,786
13	18,774	20,187	20,591	21,003	21,423	21,851	22,288	22,734	23,189	23,653	24,126	24,609	25,593
14	20,404	21,940	22,379	22,827	23,284	23,750	24,225	24,710	25,204	25,708	26,222	26,746	27,816
15	22,103	23,767	24,242	24,727	25,222	25,726	26,241	26,766	27,301	27,847	28,404	28,972	30,131
16	24,011	25,818	26,334	26,861	27,398	27,946	28,505	29,075	29,657	30,250	30,855	31,472	32,731
17	26,075	28,038	28,599	29,171	29,754	30,349	30,956	31,575	32,207	32,851	33,508	34,178	35,545
18	28,357	30,491	31,101	31,723	32,357	33,004	33,664	34,337	35,024	35,724	36,438	37,167	38,654
19	30,863	33,186	33,850	34,527	35,218	35,922	36,640	37,373	38,120	38,882	39,660	40,453	40,453
20	33,600	36,129	36,852	37,589	38,341	39,108	39,890	40,688	41,502	42,332	43,179	43,179	43,179
21	36,611	39,367	40,154	40,957	41,776	42,612	43,464	44,333	45,220	46,124	46,124	46,124	46,124
22	39,915	42,919	43,777	44,653	45,546	46,457	47,386	48,334	49,301	49,301	49,301	49,301	49,301
23	43,531	46,807	47,743	48,698	49,672	50,665	51,678	52,712	52,712	52,712	52,712	52,712	52,712
24	47,503	51,078	52,100	53,142	54,205	55,289	56,395	56,395	56,395	56,395	56,395	56,395	56,395
25	51,865	55,769	56,884	58,022	59,182	60,366	60,366	60,366	60,366	60,366	60,366	60,366	60,366

Section 3. **Institutional teachers' pay schedules.** (1) (a) The 12-month pay schedule for institutional teachers for fiscal year 1984 is as follows:

Annual Hours — 2080
Pay Matrix — Teachers
Term — Twelve Months

Note: Includes Insurance
Matrix Type — Annual

	Education Level					
YEARS OF EXPERIENCE (Step)	BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	17,277	17,827	18,392	18,667	18,942	19,507
1	17,924	18,538	19,152	19,459	19,766	20,380
2	18,570	19,248	19,910	20,251	20,589	21,253
3	19,217	19,960	20,670	21,042	21,414	22,125
4	19,863	20,670	21,430	21,833	22,238	22,998
5	20,510	21,382	22,190	22,626	23,063	23,874
6	21,154	22,092	22,948	23,418	23,886	24,742
7	21,802	22,804	23,709	24,210	24,711	25,615

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8	22,447	23,514	24,468	25,001	25,536	26,488
9	23,094	24,226	25,228	25,792	26,358	27,360
10	23,742	24,936	25,987	26,585	27,183	28,233

(b) The 9-month pay schedule for institutional teachers for fiscal year 1984 is as follows:

Annual Hours — 1480
Pay Matrix — Teachers
Term — Nine Months

Note: Includes Insurance
Matrix Type — Annual

Education Level

YEARS OF EXPERIENCE (Step)	BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	13,228	13,640	14,064	14,270	14,477	14,900
1	13,713	14,174	14,634	14,864	15,095	15,555
2	14,198	14,706	15,203	15,458	15,712	16,210
3	14,683	15,240	15,773	16,052	16,331	16,864
4	15,167	15,773	16,343	16,645	16,949	17,519
5	15,653	16,307	16,913	17,240	17,567	18,173
6	16,136	16,839	17,481	17,834	18,185	18,827
7	16,622	17,373	18,052	18,428	18,803	19,481
8	17,105	17,906	18,621	19,021	19,422	20,136
9	17,591	18,440	19,191	19,614	20,039	20,790
10	18,077	18,972	19,760	20,209	20,657	21,445

(2) (a) The 12-month pay schedule for institutional teachers for fiscal year 1985 is as follows:

Annual Hours — 2080
Pay Matrix — Teachers
Term — Twelve Months

Note: Includes Insurance
Matrix Type — Annual

Education Level

YEARS OF EXPERIENCE (Step)	BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	18,006	18,575	19,160	19,445	19,729	20,314
1	18,676	19,311	19,947	20,264	20,582	21,217
2	19,344	20,046	20,731	21,084	21,434	22,121
3	20,014	20,783	21,518	21,903	22,288	23,024
4	20,682	21,518	22,304	22,721	23,141	23,927
5	21,352	22,255	23,091	23,542	23,994	24,831
6	22,019	22,989	23,875	24,362	24,846	25,732
7	22,689	23,726	24,663	25,182	25,700	26,636
8	23,357	24,461	25,449	26,000	26,554	27,539
9	24,026	25,198	26,235	26,819	27,405	28,442
10	24,697	25,933	27,021	27,640	28,259	29,345

(b) The 9-month pay schedule for institutional teachers for fiscal year 1985 is as follows:

Annual Hours — 1480
Pay Matrix — Teachers

Note: Includes Insurance
Matrix Type — Annual

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Term — Nine Months

YEARS OF EXPERIENCE (Step)	Education Level BA (Grade 1)	BA+1 (Grade 2)	BA+2 (Grade 3)	BA+3 (Grade 4)	MA (Grade 5)	MA+1 (Grade 6)
0	13,805	14,231	14,670	14,884	15,097	15,536
1	14,307	14,783	15,260	15,498	15,737	16,213
2	14,808	15,335	15,848	16,113	16,376	16,891
3	15,311	15,887	16,439	16,727	17,016	17,568
4	15,812	16,439	17,028	17,341	17,656	18,245
5	16,314	16,991	17,618	17,957	18,296	18,923
6	16,814	17,542	18,206	18,572	18,935	19,599
7	17,317	18,095	18,797	19,187	19,575	20,277
8	17,818	18,646	19,387	19,800	20,216	20,954
9	18,320	19,199	19,976	20,414	20,854	21,632
10	18,823	19,750	20,566	21,030	21,494	22,309

Section 4. **Liquor store occupations pay schedules.** (1) The pay schedule for liquor store occupations for fiscal year 1984 is as follows:

Annual Hours — 2080
Pay Matrix — Retail Clerk

Note: Includes Insurance
Matrix Type — Hourly

Grade	$/Hour
L1	0.000
L2	6.974
L3	7.460
L4	7.730
L5	8.012
L6	8.604
L7	9.249
L8	9.972

(2) The pay schedule for liquor store occupations for fiscal year 1985 is as follows:

Annual Hours — 2080
Pay Matrix — Retail Clerk

Note: Includes Insurance
Matrix Type — Hourly

Grade	$/Hour
L1	0.000
L2	7.225
L3	7.725
L4	8.004
L5	8.295
L6	8.905
L7	9.569
L8	10.313

Section 5. **Blue-collar pay schedules.** (1) The pay schedule for blue-collar workers for fiscal year 1984 is as follows:

Annual Hours — 2080
Pay Matrix — Blue-Collar

Note: Includes Insurance
Matrix Type — Hourly

Grade	$/Hour
B1	7.249
B2	7.649
B3	8.049
B4	8.449
B5	8.849
B6	9.249
B7	9.649
B8	10.049
B9	10.449
B10	10.849
B11	11.249
B12	11.649
B00	12.049

(2) The pay schedule for blue-collar workers for fiscal year 1985 is as follows:

Annual Hours — 2080
Pay Matrix — Blue-Collar

Note: Includes Insurance
Matrix Type — Hourly

Grade	$/Hour
B1	7.607
B2	8.007
B3	8.407
B4	8.807
B5	9.207
B6	9.607
B7	10.007
B8	10.407
B9	10.807
B10	11.207
B11	11.607
B12	12.007
B00	12.407

Section 6. Section 2-18-106, MCA, is amended to read:

"2-18-106. No limitation on legislative authority — transfer of funds. (1) Parts 1, 2, and 3 do not limit the authority of the legislature relative to appropriations for salary and wages. The budget director shall adjust his determinations in accordance with legislative appropriations.

(2) Unexpended agency appropriation balances in the first year of the biennium may be transferred to the second year of the biennium to offset the costs of pay increases."

Section 7. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

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(2) It is the intent of the legislature that, for the biennium ending June 30, *1985*, the:

(a) pay schedules provided for in 2-18-311 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the *48th* legislature;

(b) pay levels provided for in 2-18-311 through 2-18-315 may not be increased through collective bargaining after adjournment of the *48th* legislature; and

(c) total funds required to implement the pay schedules provided for in 2-18-311 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the *48th* legislature.

(3) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(4) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 8. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for utilizing pay schedules. (1) The pay schedules provided in 2-18-311 and 2-18-312 shall be implemented as follows:

(a) The pay schedule provided in 2-18-311 indicates the annual compensation for the fiscal year ending June 30, *1984*, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) The pay schedule provided in 2-18-312 indicates the annual compensation for the fiscal year ending June 30, *1985*, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(c) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee shall be established at the end of the probationary period in accordance with rules promulgated by the department.

(d) (i) The compensation of each employee on the first day of the first pay period in fiscal year *1984* shall be that amount which corresponds to the grade and step occupied on the last day of the preceding fiscal year of *1983*.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1985* shall be that amount which corresponds to the grade and step occupied on the last day of the fiscal year *1984*.

(iii) In compliance with rules adopted to implement this part, each employee is eligible on his anniversary date to advance one step in the pay matrix *for* fiscal year *1984 and fiscal year 1985*. However, if the employee's anniversary date falls between (inclusive) July 1 and the first

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day of the first pay period of fiscal year *1984* or *1985*, as the case may be, he will advance one step on the first day of that pay period.

(2) The pay schedules provided in 2-18-311 and 2-18-312 and the provisions of subsection (1) of this section do not apply to those institutional teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315.

(3) The pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 shall be implemented as follows:

(a) (i) The pay schedules provided in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed by institutions under the authority of the department of institutions for fiscal years *1984* and *1985*.

(ii) The compensation of each teacher on the first day of the first pay period in July, *1983*, shall be that amount which corresponds to his level of academic achievement and the step occupied on June 30, *1983*.

(iii) The compensation of each teacher on the first day of the first pay period in July, *1984*, shall be that amount which corresponds to his level of achievement and the step occupied on June 30, *1983*.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, *1984*, and June 30, *1985*, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1984* or *1985*, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, *1984*, and June 30, *1985*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1984* or *1985*, as the case may be, shall be that amount which corresponds to that grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) No member of a bargaining unit may receive the amounts indicated in the respective pay schedules provided in 2-18-311 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, *1985*.

(ii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, *1983*, retroactivity to that date may be negotiated.

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(iii) In the event that negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) of this section are not completed by July 1, *1983*, members of the bargaining unit involved will continue to receive the compensation they were receiving as of June 30, *1983*.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-313 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee shall not be reduced by the implementation of the pay schedules provided for in 2-18-311 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-311 and 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs which will enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it shall be a negotiable subject under 39-31-305."

Section 9. Section 2-18-304, MCA, is amended to read:

"2-18-304. Longevity allowance. In addition to the compensation provided for in 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service shall receive the larger of $10 a month or 10% of the difference between the base compensation for his grade and step (where applicable) and the base compensation for the next highest grade and corresponding step (where applicable) multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service. Service to the state is not interrupted by authorized leaves of absence."

Section 10. Section 2-18-305, MCA, is amended to read:

"2-18-305. Allocation between wages and group benefits. (1) The dollar amounts shown in the respective pay schedules provided in 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, as the case may be, represent the maximum amount allocated by the state for wages and group benefits, exclusive of longevity as defined in 2-18-304. Except as provided in subsection (2) of this section, that amount specifically allocated for group benefits shall be determined by 2-18-703. An employee who elects not to be covered by a state employee group benefit plan will receive as wages the amount shown in the appropriate pay schedule less the state contribution for group benefits as determined by 2-18-703.

(2) Employees may, through collective bargaining, determine the allocation of the amounts shown in the pay schedules provided in 2-18-311, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, as the case may be, between wages and group benefits, except that in no case may the group benefits allocation be less than the amounts provided in 2-18-703."

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Section 11. Section 2-18-703, MCA, is amended to read:

"2-18-703. Contributions. (1) Each agency as defined in 2-18-601 shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701 other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be *$90* per month for the fiscal year ending June 30, *1984*, and *$100* per month for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 12. **Appropriation.** There is appropriated from the general fund to the governor's office $9,700,000 for the biennium ending June 30, 1985, to implement the provisions of this act. In distributing funds necessary to implement this act among the various state agencies, no reduction shall be made on account of vacancy savings in instructional contract faculty within the Montana university system.

Section 13. **Codification instruction.** Sections 2, 3, 4, and 5 shall be codified as 2-18-312, 2-18-313, 2-18-314, and 2-18-315, respectively.

Section 14. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

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APPROPRIATIONS

ENACTED BY THE

Forty-eighth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1983

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APPROPRIATIONS

HOUSE BILL NO. 1

AN ACT IMPLEMENTING SECTION 4 OF INITIATIVE 95 BY ALLOCATING INTEREST ON THE COAL TAX TRUST FUND TO THE MONTANA ECONOMIC DEVELOPMENT FUND; APPROPRIATING FUNDS FROM THE ECONOMIC DEVELOPMENT FUND TO THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF LABOR AND INDUSTRY TO ACCOMPLISH THE OBJECTIVES ESTABLISHED BY THE PEOPLE OF MONTANA WITH THEIR APPROVAL OF INITIATIVE 95; AUTHORIZING LOANS FROM THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Total appropriation.** For the biennium ending June 30, 1985, there is allocated a total of $3,525,000 of the coal tax trust fund interest to the Montana economic development fund created by section 4 of Initiative 95.

Section 2. **Appropriation.** The following appropriations are from the Montana economic development fund for the biennium ending June 30, 1985:

DEPARTMENT OF COMMERCE

Governor's Council on Economic Development	$ 75,000

This appropriation may not be expended until the council is created pursuant to 2-15-122 to advise the department on the implementation and development of economic development programs authorized in Title 90, chapter 1, part 1.

Council on Science and Technology	100,000

The appropriation may not be expended until the council is created pursuant to 2-15-122 to advise the department on the application of scientific and technological research in the development and implementation of economic development programs authorized in Title 90, chapter 1, part 1.

Business Development Assistance Program, as authorized by subsections (5) and (7) of 90-1-102 and 90-1-105(3)	400,000
Assistance to Local Development Organizations, as authorized by 90-1-102(8) and 90-1-105(4)	400,000

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University Business Management Development Program	100,000
Montana Product Promotion, as authorized by 90-1-102(5) and subsections (2) and (5) of 90-1-105	100,000
Montana Economic Reporting and Forecasting System, as authorized by subsections (2) and (4) of 90-1-102 and 90-1-107(1)	150,000
Business Location Promotion, as authorized by subsections (2), (3), and (6) of 90-1-105	150,000
Travel and Tourism Promotion, as authorized by subsections (2), (5), and (6) of 90-1-105	800,000
Montana Economic Development Board, as created in [HB 100 and HB 700]	400,000
DEPARTMENT OF LABOR AND INDUSTRY	
Labor Training Program	500,000

This appropriation is to serve as state match for federal job training partnership act money under the displaced workers provisions and to supplement economic development activities for new and expanding business as authorized under the job training partnership act.

TOTAL GENERAL FUND	$3,525,000

Section 3. **Spending authority.** The following appropriation is for spending authority for private donations for the Travel and Tourism Promotion Program for the biennium ending June 30, 1985:

DEPARTMENT OF COMMERCE	
Travel, Tourism, and Business Promotion	$700,000

Section 4. **Borrowing.** The Department of Commerce may borrow from the general fund or other funds for:

DEPARTMENT OF COMMERCE	
Operating costs of the Umbrella Industrial Revenue Bond Program, 4-year loan	$150,000

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 28, 1983.

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HOUSE BILL NO. 40

AN ACT TO AMEND HOUSE BILL NO. 500, LAWS OF 1981, TO ELIMINATE THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE DEPOSIT $13 MILLION OF LIQUOR PROFITS TO THE GENERAL FUND DURING THE BIENNIUM ENDING JULY 1, 1983; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19, Division A, Department of Revenue, House Bill No. 500, Laws of 1981, is amended to read:

"DEPARTMENT OF REVENUE

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
1. General Operations	12,340,311	1,325,313	12,490,050	1,359,671
2. Audit Costs	16,500	8,500	49,500	25,500
3. Legal Fees: Director's Office	25,000		25,000	
4. Recovery Services Division	197,718	593,153	199,603	598,807
5. SB 50	40,000		10,000	
Total Department of Revenue	12,619,529	1,926,966	12,774,153	1,983,978

Should the recovery services division return $1.05 in collections per $1.00 expended in 1982, the appropriation in item 4 may be increased a maximum of $16,000 from the general fund and $48,000 in federal funds for fiscal 1983.

Cash within the central supply revolving account at 1981 fiscal year end must be deposited to the general fund. Collections from liquidation of inventory during the 1983 biennium must also be deposited to the general fund.

In addition to those amounts appropriated above, there are appropriated to the liquor division funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor monopoly. During the 1983 biennium, profits may not be less than 15% of net liquor sales. Net liquor sales are gross liquor sales less discounts and all taxes collected.

The operational expenses of the liquor merchandising system may not exceed 15% of net liquor sales. Operational expenses may not include product or freight costs. The liquor division has full authority to determine

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store operating hours and the number and location of stores and employees.

Nonprofitable state stores should be closed or converted to agency stores in an orderly manner. A nonprofitable store is one that shows a net loss or is less profitable than if run at agency store status after reducing gross revenues by all state excise and license taxes and by deducting therefrom all normal operating expenses, which include a pro rata share, based on gross sales, of central administrative office expenses.

The county commissioners of the various counties and the governing bodies of local government units shall provide office space in county courthouses or government office buildings to the department of revenue of the state for its use at no cost to the state. The department is not liable for any expenses in connection with the use of such space, including but not limited to rent, utilities, or janitorial services. The department shall use such space as offices for its agents: the county assessor, appraiser, and their respective staffs.

Item 5 is contingent upon passage of SB 50."

Section 2. **Effective date — applicability.** This act is effective on passage and approval and applies retroactively and prospectively to the entire biennium ending July 1, 1983.

Approved February 4, 1983.

HOUSE BILL NO. 76

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FORTY-EIGHTH LEGISLATURE AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following amounts are appropriated from the general fund for fiscal years 1983, 1984, and 1985 for the operation of the forty-eighth legislature and pre-session costs of the forty-ninth legislature:

House of Representatives	$1,938,674
Senate	1,185,627
Legislative Council	386,838
Printing Legislative Publications	148,000

Section 2. **Effective date.** This act is effective on passage and approval.

Approved January 14, 1983.

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HOUSE BILL NO. 84

AN ACT APPROPRIATING MONEY TO THE PUBLIC SERVICE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limit.** The appropriation contained in this act is intended to provide only necessary and ordinary expenditures for the year for which the appropriation is made. The unspent balance of this appropriation shall revert to the general fund.

Section 2. **Appropriation.** There is appropriated $25,000 from the general fund to the Public Service Commission for the fiscal year ending June 30, 1983, for the purpose of paying the wages, salaries, and benefits of Public Service Commission employees and other necessary operating expenses.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1983.

HOUSE BILL NO. 95

AN ACT TO APPROPRIATE MONEY FOR SANITARY REVIEW OF SUBDIVISIONS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR THE BIENNIUM ENDING JUNE 30, 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund to the Department of Health and Environmental Sciences $58,000 for the biennium ending June 30, 1983, for the purpose of providing funding for subdivision review under Title 76, chapter 4, part 1, MCA.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved February 18, 1983.

HOUSE BILL NO. 131

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF MILITARY AFFAIRS TO SATISFY THE FINAL JUDGMENT IN CAUSE NO. 81-440, MONTANA SUPREME COURT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the Department of Military Affairs $1,043,524.61 from Insurance Revolving Account 07253 to pay all unsatisfied obligations and final judgments against the Montana National Guard and the State of Montana in Cause No. 81-440, Montana

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Supreme Court, entitled Michael R. Jacques, Plaintiff, v. Montana National Guard, et al., Defendants.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1983.

HOUSE BILL NO. 144

AN ACT TO APPROPRIATE MONEY TO THE GOVERNOR'S OFFICE TO PAY THE STATE'S SHARE OF THE INDIVIDUAL AND FAMILY GRANT PROGRAM PROVIDING DISASTER RELIEF FUNDS TO FLOOD VICTIMS.

WHEREAS, the Presidential Disaster Declaration (FEMA-640-DR-MT) in 1981 entitled the state of Montana to federal disaster relief funds to assist flood victims; and

WHEREAS, in 1981 the Governor of the state of Montana entered into a federal-state agreement with the Federal Emergency Management Agency to enable the state to receive federal disaster assistance under the Individual and Family Grant Program; and

WHEREAS, a state participating in the Individual and Family Grant Program is required to pay 25% of the cost of the program; and

WHEREAS, the Federal Emergency Management Agency agreed to advance the full cost of this program to provide immediate assistance to flood victims, with the stipulation that the Governor request the 48th Legislature to appropriate an amount equal to the state's share of the program's cost; and

WHEREAS, the state's share of the grant program amounts to $133,130.37 according to a recent federal audit.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $133,130.37 from the general fund to the Governor's office to pay the state's share of the Individual and Family Gr..nt Program providing assistance to flood victims.

Approved March 22, 1983.

HOUSE BILL NO. 180

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF INSTITUTIONS FOR PAYMENT OF A JUDGMENT AGAINST THE STATE OF MONTANA BY MARJORIE LANGLOIS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $84,272 from the general fund to the Department of Institutions to satisfy the judgment against the Department of Institutions, which claim is based upon charges

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of sex discrimination arising from an employment dispute and is the subject of legal action in the case of Langlois v. Montana State Prison (Civil No. CV-80-49-B; D. Mont.).

Section 2. **Conditions.** This appropriation is subject to the condition that the claimant execute a full satisfaction of judgment against the Department of Institutions, its officers and employees, and the State of Montana for damages arising from the alleged discrimination which is the subject of the claim.

Section 3. **Appropriation nonjudgmental.** By appropriating the above sum, the Legislature is not passing on the merits of this claim.

Section 4. **Effective date.** This act is effective on passage and approval.

Approved March 24, 1983.

HOUSE BILL NO. 187

AN ACT TO APPROPRIATE A CONTINGENCY FUND OF $300,000 TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR IN-HOME SERVICES AS PROVIDED FOR IN SECTION 53-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the Department of Social and Rehabilitation Services from the general fund $150,000 each fiscal year of the biennium ending June 30, 1985, for in-home services. No portion of this appropriation may be spent unless the appropriation in HB 898 does not result in $300,000 for in-home services being available during the biennium. If the appropriation in HB 898 does not result in $300,000 for in-home services, only so much of the amount appropriated in this bill may be spent as is needed to supplement the amount appropriated in HB 898 to result in $300,000 being available for in-home services. Allocation of funds to in-home services must be based on a formula consistent with the requirements of Title III of the federal Older Americans Act.

Approved April 25, 1983.

HOUSE BILL NO. 243

AN ACT TO APPROPRIATE FUNDS TO THE INDIAN LEGAL JURISDICTION PROGRAM IN THE OFFICE OF THE GOVERNOR FOR THE FISCAL YEAR ENDING JUNE 30, 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limit.** The appropriation contained in this act is intended to provide only necessary and ordinary expenditures for the year for which the appropriation is made. The unspent balance of this appropriation must revert to the general fund.

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Section 2. **Appropriation.** There is appropriated to the Indian Legal Jurisdiction Program within the Office of the Governor $149,000 from the general fund for the fiscal year ending June 30, 1983.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved February 22, 1983.

HOUSE BILL NO. 247

AN ACT TO APPROPRIATE $21,554 FROM THE STATE EQUALIZATION AID ACCOUNT TO REIMBURSE PETROLEUM COUNTY SCHOOL DISTRICTS FOR STATE EQUALIZATION AID TO WHICH THE DISTRICTS WERE ENTITLED IN THE 1981-82 SCHOOL FISCAL YEAR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $21,554 from the state equalization aid account to the Office of Public Instruction to reimburse Petroleum County school districts for state equalization aid to which the districts were entitled in the 1981-82 school fiscal year but which was not received as a result of incorrect county reports for entitlement purposes.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 28, 1983.

HOUSE BILL NO. 285

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF JUSTICE FOR THE FISCAL YEAR ENDING JUNE 30, 1983, TO PROVIDE FUNDING FOR ORDERED PAY GRADE RECLASSIFICATION OF HIGHWAY PATROL OFFICERS AND UNIFORMED HIGHWAY PATROL SUPERVISORY PERSONNEL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated to the department of justice from the Highway Department's account in the earmarked revenue fund in accordance with 44-1-501 and from the general fund to finance ordered pay grade reclassification of Highway Patrol Officers I and II and of uniformed Highway Patrol supervisory personnel for the fiscal year ending June 30, 1983:

Highway Department Earmarked Account	$1,069,834

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General Fund	171,393
Total	$1,241,227

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 25, 1983.

HOUSE BILL NO. 317

AN ACT TO APPROPRIATE MONEY TO SATISFY A FINAL JUDGMENT OR SETTLE ALL CLAIMS IN CAUSE NO. 79-14-GF, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, GREAT FALLS DIVISION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the Department of Administration self-insurance liability risk retention account No. 06143 an amount necessary for full payment or settlement of all obligations, claims, and judgments against the state veterinarian, James W. Glosser, in Cause No. 79-14-GF, United States District Court, District of Montana, Great Falls Division, entitled M. P. Doran, et al., Plaintiffs, v. James W. Glosser, et al., Defendants. The Department of Administration is authorized to expend this appropriation in full satisfaction of such judgment if it is upheld and made final on appeal to the United States Court of Appeals, Ninth Circuit, or in connection with the provisions of any settlement agreement settling all claims arising out of Cause No. 79-14-GF, entered into by the parties with the consent of James W. Glosser and the terms of which the department has determined to be in the best interest of the State of Montana. Nothing in this act may be construed as an admission or opinion of liability on the part of the defendants by the Legislature.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

HOUSE BILL NO. 334

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR ADMINISTRATION OF THE 10-COUNTY TRIANGLE CONSERVATION DISTRICT SALINE SEEP CONTROL PROJECT.

WHEREAS, saline seep has been identified as one of the major threats to ground water quality in the State of Montana; and

WHEREAS, approximately 280,000 acres of cropland are out of production as a result of saline seep; and

WHEREAS, this acreage is increasing by an average annual rate of 10%; and

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WHEREAS, the Triangle Conservation District Saline Seep Control Project has proven successful in reducing saline seep and placing crop acreage back into production, which assures future food production and protection of the local tax base; and

WHEREAS, cost-share funding is to be encouraged from landowners and the federal government.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated up to $50,000 from the resource indemnity trust interest account provided for in 15-38-201 to the Department of Natural Resources and Conservation, after any allocations made pursuant to House Bill 447, House Bill 876, House Bill 745, and House Bill 597, for the administration of the 10-County Triangle Conservation District Saline Seep Control Project for the biennium ending June 30, 1985.

Approved April 27, 1983.

HOUSE BILL NO. 407

AN ACT TO APPROPRIATE $25,000 TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO CREATE A STATEWIDE NETWORK OF FOOD BANKS; AND PROVIDING AN EFFECTIVE DATE AND TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $25,000 from the general fund to the Department of Social and Rehabilitation Services to establish and coordinate a statewide network of volunteer food bank services. The department may use the money for the salary and expenses of not more than one FTE employee or for contracting for such services. Volunteer food bank services include the donation, collection, storage, and distribution of usable but unsalable food and surplus commodities.

Section 2. **Effective date — termination date.** This act is effective July 1, 1983, and terminates June 30, 1984.

Approved April 27, 1983.

HOUSE BILL NO. 412

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1983; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time Limit.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation shall revert to the fund from which it was appropriated.

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Section 2. **Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the governor may reduce any appropriation in this act by not more than 15%.

Section 3. **Other appropriated funds.** The appropriations made under the column heading "Other Appropriated Funds" are from funds within the earmarked revenue fund, the federal and private revenue fund, and the revolving fund that accrue under provisions of law to the spending agency.

Section 4. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 5. **Appropriations.** The following money is appropriated, subject to the terms and conditions of this act, for the fiscal year ending June 30, 1983:

SUPPLEMENTAL APPROPRIATIONS FISCAL YEAR 1983

	General Fund	Other Appropriated Funds
CONSUMER COUNSEL		
Major Cases	$	$100,000
PUBLIC SERVICE COMMISSION		
A.T.&T. Antitrust Lawsuit	10,000	
Montana - Dakota Reorganization Contest	10,000	
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Water Rights Adjudication Program	575,000	
OFFICE OF PUBLIC INSTRUCTION		
Transportation	350,000	
SCHOOL FOR DEAF AND BLIND		
Utility Costs	30,000	
MONTANA STATE UNIVERSITY	781,213	180,635
UNIVERSITY OF MONTANA	233,767	509,000
EASTERN MONTANA COLLEGE	179,178	277,415
NORTHERN MONTANA COLLEGE	284,375	106,620
WESTERN MONTANA COLLEGE	21,078	95,000
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY	399,171	37,308

The fiscal 1983 expenditures from the current unrestricted subfund at each of the units of the Montana university system listed below shall not exceed: Montana State University — $40,647,582, University of Montana — $33,196,957, Eastern Montana College — $11,464,876, Northern Montana College — $5,849,355, Western Montana College — $3,272,002, Montana College of Mineral Science and Technology — $7,520,321, except by any amount granted from the vacancy savings contingency fund appropriated to the Governor's Office in House Bill 500 of the 47th Legislature. To the extent revenues generated under provisions of section 20-25-423, MCA, exceed $13,079,452 in fiscal 1983, general fund shall revert.

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	General Fund	Other Appropriated Funds
DEPARTMENT OF JUSTICE		
County Attorney Payroll Program	52,000	
Transportation of Prisoners Program	16,000	
DEPARTMENT OF STATE LANDS		
Fire Suppression	797,355	
DEPARTMENT OF REVENUE		
Motor Vehicle Fee Reimbursement	350,000	
SUPREME COURT		
Clerk of Court	20,300	
Boards and Commissions	17,000	
	$4,126,437	$1,305,978

Section 6. **House Bill 500, Laws of Montana 1981, Section C.** Natural Resources and Business Regulation: Department of Natural Resources, item 5, Water Resources Division, Fiscal Year 1983. Other Appropriated Funds is reduced from $2,840,433 to $1,764,026.

Section 7. **House Bill 500, Laws of Montana 1981, Section A.** Legislative, Judicial, and Administrative Agencies; Judiciary, item 9, Water Courts Supervision, Fiscal Year 1983. Other Appropriated Funds is reduced from $349,762 to $230,762.

Section 8.. **Effective date.** This act is effective on passage and approval.

Approved March 22, 1983.

HOUSE BILL NO. 435

AN ACT TO INCREASE AGENCY BUDGETS DURING THE BIENNIUM ENDING JUNE 30, 1983, WHICH INCREASES WOULD USUALLY BE MADE BY BUDGET AMENDMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Increase in spending authority.** The following money is appropriated for the fiscal year ending June 30, 1983:

Agency and Program	Amount	Fund
OFFICE OF PUBLIC INSTRUCTION		

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Agency and Program	Amount	Fund
Distribution to Public Schools	$ 7,570	Earmarked Revenue
Basic Skills	7,999	Revolving
VOCATIONAL-TECHNICAL CENTERS		
Butte Center	8,532	Restricted Current
Helena Center	130,878	Restricted Current
DEPARTMENT OF JUSTICE		
Field Services	40,000	Federal and Private Revenue
Field Services	34,000	Federal and Private Revenue
MONTANA STATE LIBRARY COMMISSION		
General Library Services	99,848	Federal and Private Revenue
General Library Services	27,040	Federal and Private Revenue
General Library Services	3,000	Revolving
FIRE SERVICES TRAINING SCHOOL	12,000	Federal and Private Revenue
DEPARTMENT OF FISH, WILDLIFE, AND PARKS		
Enforcement Division	100,000	Earmarked Revenue
Fisheries	31,807	Earmarked Revenue
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES		
Air Quality	1,513	Federal and Private Revenue
Air Quality	6,500	Federal and Private Revenue
Air Quality	7,120	Federal and Private Revenue
Water Quality	2,540	Federal and Private Revenue
DEPARTMENT OF LIVESTOCK		
Inspection and Control Program	14,573	Earmarked Revenue
Beef and Pork Research & Marketing	100,000	Federal and Private Revenue
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Energy Division	293,946	Federal and Private Revenue
Energy Division	30,866	Federal and Private Revenue

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Agency and Program	Amount	Fund
Water Resources Division	36,000	Earmarked Revenue
Water Resources Division	10,000	Earmarked Revenue
Water Resources Division	13,000	Federal and Private Revenue
DEPARTMENT OF ADMINISTRATION		
Central Stores	117,174	Revolving
Publications and Graphics	73,059	Revolving
Workers' Compensation Judge	3,000	Earmarked Revenue
Investment Division	255,000	Earmarked Revenue
Central Stores/Surplus	62,340	Revolving
DEPARTMENT OF AGRICULTURE		
Environmental Management Program	3,000	Federal and Private Revenue
Environmental Management Program	8,086	Federal and Private Revenue
MOUNTAIN VIEW SCHOOL		
Care and Custody	8,716	Federal and Private Revenue
DEPARTMENT OF COMMERCE		
Board of Morticians	5,236	Earmarked Revenue
Board of Physical Therapists	2,500	Earmarked Revenue
Board of Architects	8,400	Earmarked Revenue
Board of Medical Examiners	14,347	Earmarked Revenue
DEPARTMENT OF MILITARY AFFAIRS		
Army Program	56,248	Federal and Private Revenue
LEGISLATIVE COUNCIL		
Montana Code Annotated Program	33,000	Revolving
STATE AUDITOR		
Central Payroll	45,000	Revolving
DEPARTMENT OF HIGHWAYS		
General Operations	125,000	Federal and Private Revenue
Preconstruction	1,618,943	Earmarked Revenue
	(1,618,943)	Federal and Private Revenue
DEPARTMENT OF STATE LANDS		
Central Management	376,753	Federal and Private Revenue

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Agency and Program	Amount	Fund
DEPARTMENT OF INSTITUTIONS		
Corrections	1,000	Federal and Private Revenue
PINE HILLS SCHOOL		
Care and Custody	9,067	Federal and Private Revenue

Section 2. **Limitations on expenditures.** The conditions provided in sections 1 through 14 of House Bill 500, Laws of 1981, as amended by House Bill 2, Special Laws of 1981, apply to appropriations under this act.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 26, 1983.

HOUSE BILL NO. 447

THE GENERAL APPROPRIATIONS ACT OF 1983 FOR THE APPROPRIATION OF MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1985; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Title.** This act may be cited as the "General Appropriations Act of 1983".

Section 2. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Approving authority" means the governor or his designated representative for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; appropriate legislative committees for legislative branch agencies; or the board of regents or its designated representative for the university system.

(3) "University system unit" means the board of regents, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural experiment station with central offices at Bozeman, the cooperative

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extension service with central offices at Bozeman, the forestry and conservation experiment station with central offices at Missoula, or the bureau of mines and geology with central offices at Butte.

Section 3. **Other funds to offset general fund.** The approving authority shall decrease the general fund appropriation of the agency by the amount of funds received from other sources in excess of the appropriation provided in this act unless such action is expressly contrary to state or federal law, rule, or contract or the approving authority certifies that the services to be funded by the additional funds are significantly different from those for which the agency has received a general fund appropriation.

Section 4. **Expenditure limit.** Expenditures may not exceed appropriations.

Section 5. **Budget requests.** Sufficient funds are appropriated in this act to enable each agency to submit its 1987 biennial budget request to the budget director and the legislative fiscal analyst pursuant to the time schedule established in 17-7-112(1), MCA. If any agency fails to submit its final, complete budget request by the deadlines established in 17-7-112(1), MCA, the expenditure authority herein granted shall be reduced or rescinded by the budget director unless the agency director certifies that an emergency situation has precluded a timely budget presentation and the budget director approves an extension not to exceed 30 days.

Section 6. **Detailed budget information.** Within 2 days after submission of the preliminary executive budget to the legislative fiscal analyst, the budget director shall give the legislative fiscal analyst the governor's preliminary expenditure recommendations by object of expenditure to the second level of detail and by funding source detailed by accounting entity. Within 1 day after the legislative finance committee presents the budget analysis to the 49th Legislature, the budget director and the legislative fiscal analyst shall mutually exchange expenditure recommendations by object of expenditure to the second level of detail and by funding sources detailed by accounting entity. This final information shall be filed in the respective offices and available to members of the Legislature and the general public.

Section 7. **Operating budgets.** Expenditures may be made only in accordance with operating budgets approved by the approving authority. The respective appropriations are contingent upon approval of the operating budget by July 1 of each fiscal year. Each operating budget shall include expenditures for each agency program detailed at least by personal services, operating expenses, equipment, benefits and claims, transfers, and local assistance. However, if any agency allocates its appropriations to the second expenditure level in the state accounting system, separate operation plans need not be submitted to the approving authority.

Section 8. **Program transfers.** Within each fiscal year, the approving authority may approve agency requests for program transfers for up to 5% of the total agency budget unless specifically prohibited by other language or statutes. Justification explaining the reason for the transfer shall be submitted to the approving authority and the legislative fiscal analyst with the request. Upon approval, the approving authority shall present the

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final transfer allowed and the justification used to the legislative fiscal analyst.

Section 9. **Reduction of appropriation.** In the event of a shortfall in revenue, the governor may reduce any or all appropriations. No appropriation may be reduced by more than 15%. The following appropriations may not be reduced:

(1) payment of interest and retirement of state debt;

(2) the legislative branch;

(3) the judicial branch;

(4) school foundation program; or

(5) salaries of elected officials during their terms of office.

Section 10. **Access to records.** No funds appropriated by this act may be expended for any contract, written or oral, with a nonstate entity for services to be provided by the nonstate entity to members of the public on behalf of the state unless such contract contains a provision for legislative audit and analysis purposes in determining compliance with the terms of the contract. Each such contract may be unilaterally terminated by the state, and each contract must so provide upon refusal of the nonstate entity to allow access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13.

Section 11. **Coal tax trust income.** Interest income from the coal tax constitutional trust fund established under Article IX, section 5, of the Montana Constitution is hereby appropriated to the general fund for use during the biennium ending June 30, 1985. The portion of the general fund which represents this appropriation is appropriated to the Build Montana Program as provided in House Bill 1 ($3,175,000), the school foundation program in House Bill 919 ($27,500,000), the department of commerce in House Bill 447, items 8, 9, 11, and 12 ($3,329,755), the vocational-technical centers in House Bill 447 ($9,119,865), and any funds not otherwise designated shall be considered part of the university system's appropriation in House Bill 447.

Section 12. **Severability.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of this act.

Section 13. **Audit costs.** Amounts appropriated for audits may be transferred between fiscal years.

Section 14. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 15. **Appropriations.** The following money is appropriated for the respective fiscal years:

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A. LEGISLATIVE, JUDICIAL, AND ADMINISTRATIVE

	Fiscal 1984				Fiscal 1985			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary Total
LEGISLATIVE AUDITOR								
1. Operations								
1,495,968	858,874			2,354,842	1,692,776	830,526		2,523,302
LEGISLATIVE FISCAL ANALYST								
1. Operations								
590,400				590,400	615,250			615,250
LEGISLATIVE COUNCIL								
1. Operations								
1,686,826	528,140			2,214,966	2,108,984	179,000		2,287,984
2. NCSL Travel								
25,000				25,000				
3. CSG Travel								
15,000				15,000				
4. Interim Studies								
50,000				50,000				
5. Forestry Task Force								
25,000				25,000				
6. Revenue Oversight Committee								
25,000				25,000				
7. Administrative Code Committee								
25,000				25,000				
8. Capitol Building and Planning Committee								
5,000				5,000				
9. Salary Commission								
3,000				3,000				
10. Five State Legislative Conference								
12,000				12,000				
11. Five State Water Task Force								
6,400				6,400				
12. Legislative Management Committee								
32,000				32,000				
13. Water Marketing Study								
80,000				80,000				
14. Select Committee on Indian Affairs								
7,000				7,000				
15. Tax Classification Study, if HJR 31 passes								
17,500				17,500	17,500			17,500
Total								
2,014,726	528,140			2,542,866	2,126,484	179,000		2,305,484

Items 2 through 14 are biennial appropriations. If SB 451 is passed and approved, and if SB 451 transfers the function of interstate cooperation from the Legislative Council to the Legislative Management Committee, money appropriated for CSG and NCSL travel shall be controlled by the Legislative Management Committee.

The appropriation in item 13 is contingent upon passage of House Bill 908.

CONSUMER COUNSEL								
1. Operations								
536,813				536,813		604,256		604,256
2. Unanticipated Cases								
100,000				100,000		100,000		100,000
Total								
636,813				636,813		704,256		704,256

Item 2 is for expert witness fees to be used only if the amounts of $335,000 in fiscal 1984 and $386,750 in fiscal 1985 for expert witness fees are exceeded.

ENVIRONMENTAL QUALITY COUNCIL								
1. Operations								
231,938				231,938	233,241			233,241

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	Fiscal 1984					Fiscal 1985			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
JUDICIARY									
1. Supreme Court Operations									
a. Operations									
1,376,359				1,376,359	1,371,742				1,371,742
b. Audit									
11,000				11,000					
2. Boards and Commissions									
192,278				192,278	191,401				191,401
3. Law Library									
464,532	29,158			493,690	482,631	29,708			512,339
4. District Court Operations									
1,830,002				1,830,002	1,952,349				1,952,349
5. Water Courts									
	418,330			418,330		599,204			599,204
Total									
3,874,171	447,488			4,321,659	3,998,123	628,912			4,627,035

If judicial district 1, 7, 13, or 20 exercises the option under Senate Bill 26 to fill one of the newly created judgeships at the 1983 general election, the Supreme Court may provide the additional funds for salaries and travel from its budget and submit a request for the necessary supplemental funds to the 1985 Legislature.

GOVERNOR'S OFFICE									
1. Office of Budget & Program Planning									
677,307				677,307	696,196				696,196
2. Executive Office Program									
a. Operations									
903,295		12,500		915,795	913,249				913,249
b. Audit									
14,400				14,400					
c. Coal Tax									
200,000				200,000					
3. Board of Visitors									
75,226				75,226	74,809				74,809
4. Air Transportation									
86,487				86,487	84,560				84,560
5. Mansion Maintenance									
64,805				64,805	65,610				65,610
6. Northwest Regional Power Act									
		392,000		392,000			412,000		412,000
7. Citizens' Advocate Office									
57,944				57,944	60,272				60,272
8. Lieutenant Governor									
215,306				215,306	216,983				216,983
Total									
2,294,770		404,500		2,699,270	2,111,679		412,000		2,523,679

Item 2c is for the purpose of advocating the state's opposition to federal legislation that would prohibit or diminish the state's right to levy a 30 percent severance tax on coal mined within Montana's borders. In addition, any balance remaining from House Bill 828 of the 47th Legislature is reappropriated for use in the 1985 biennium. If the appropriation is not sufficient to cover the costs for the 1985 biennium, the Governor's Office may present a supplemental to the next Legislature.

SECRETARY OF STATE									
1. Records Management									
a. Operations									
792,466	11,000			803,466	801,447	11,000			812,447
b. Audit									
5,000				5,000					
c. Attorney Fees									
2,037				2,037					
2. Administrative Code									
a. Operations									
69,356	201,883			271,239	70,950	201,925			272,875

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	Fiscal 1984				Fiscal 1985			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
b. Audit									
1,552	1,448			3,000					
Total									
870,411	214,331			1,084,742	872,397	212,925			1,085,322

The state special revenue fund spending authority in item 1a is for the purpose of printing and distributing maps of the official legislative and congressional districts in Montana and for any technical assistance necessary for preparing the maps for printing and distribution. The Secretary of State may contract with the Legislative Council for such technical assistance. The Secretary of State may charge a reasonable fee for such maps commensurate with costs of printing and distribution. The fees must be deposited in a state special revenue fund and the proceeds thereof may be used only for purposes of printing and distributing such maps.

Item 1c is for contract services to pay court-ordered attorney fees.

The rate charged for agency filings to update the ARM may not exceed $30 per page. As provided in 2-4-312, the general fund in item 2a for nonchargeable administrative rule copies must be deposited to the state special revenue account for expenditure. Spending authority of like amounts have been added to the state special revenue account for this purpose.

COMMISSIONER OF POLITICAL PRACTICES

1. Administration							
144,037	750		144,787	140,275	750		141,025
2. Audit							
4,000			4,000				
Total							
148,037	750		148,787	140,275	750		141,025

STATE AUDITOR

1. Investment Division						
260,374		260,374	256,998			256,998
2. Management and Control Program						
a. Operations						
357,374		357,374	368,972			368,972
b. Audit						
6,700		6,700				
c. Emergency Equipment Replacement						
26,000		26,000				
3. Central Payroll Division						
a. Operations						
572,381	249,827	822,208	536,994	228,404		765,398
b. Audit						
13,500		13,500				
4. Administrative Support						
a. Operations						
228,510		228,510	230,378			230,378
b. Audit						
20,000		20,000				
5. Insurance Division						
a. Operations						
605,772		605,772	613,167			613,167
b. Actuary Fees						
10,000		10,000	10,000			10,000
c. House Bill 385 Duties						
32,000		32,000	42,000			42,000
Total						
2,132,611	249,827	2,382,438	2,058,509	228,404		2,286,913

Item 2c is a biennial appropriation for replacement of equipment used in preparing state warrants. This appropriation may be used only if the existing equipment fails and cannot reasonably be repaired.

Item 5c is to carry out the duties mandated in House Bill 385 from the regular session of the 47th Legislature.

In addition to the funds appropriated above, the amount needed for the local assistance distribution of funds provided in 17-3-212, 19-9-702, 19-9-1007, 19-10-305, 19-11-512, 19-11-606, 19-12-301, and 19-13-604, MCA, is appropriated.

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
DEPARTMENT OF JUSTICE										
1. Legal Services										
a. Operations	755,277	19,520			774,797	753,457	20,692			774,149
b. Case-related Travel	10,000				10,000	10,000				10,000
c. Case Assessments	18,500				18,500	19,600				19,600
2. County Prosecutor Services	119,690				119,690	121,142				121,142
3. Agency Legal Services				362,347	362,347				365,482	365,482
4. Motor Vehicle Administration		93,151			93,151		93,570			93,570
5. Driver Licensing Program	1,878,110	99,400			1,977,510	1,900,536	98,900			1,999,436
6. Field Services	2,671,960	6,059,647	34,000		8,765,607	2,754,682	5,974,698			8,729,380
7. Vehicle Registration		1,978,452			1,978,452		2,031,378			2,031,378
8. Law Enforcement Services Administration	72,710				72,710	73,571				73,571
9. County Attorney Payroll	741,291				741,291	773,321				773,321
10. Law Enforcement Telecommunications Bureau										
a. Operations	198,279	411,383			609,662	323,840	342,162			666,002
b. Switcher	415,000				415,000					
11. Law Enforcement Academy	373,646	262,770			636,416	447,328	205,732			653,060
12. Fire Marshal	323,062				323,062	325,361				325,361
13. Identification Bureau	211,475				211,475	207,520				207,520
14. Criminal Investigators	156,949		204,041		360,990	166,242		208,803		375,045
15. Central Services										
a. Operations	352,274	25,000			377,274	351,750	25,000			376,750
b. Audit	27,422	4,078			31,500					
16. Data Processing	229,575				229,575	230,329				230,329
17. Transportation of Prisoners	148,401				148,401	156,107				156,107
18. Forensic Science										
a. Operations	351,001	289,366			640,367	358,678	235,169			593,847
b. Lab Equipment	11,000				11,000	12,500				12,500
19. Legal Jurisdiction Project										
a. Operations	68,828				68,828	73,956				73,956
b. Legal Fees	300,000				300,000					
Total	9,434,450	9,242,767	238,041	362,347	19,277,605	9,059,920	9,027,301	208,803	365,482	18,661,506

Item 1b is appropriated for case-related travel only.

Item 1c is appropriated for multistate case assessments for antitrust cases only.

The rate charged by Agency Legal Services may not exceed $42.50 per hour in fiscal 1984 and $45 per hour in fiscal 1985.

Item 10b is a biennial appropriation.

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	Fiscal 1984				Fiscal 1985				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

Item 18b is appropriated for lab equipment and may be used to match federal funds.

Item 19b is for legal fees, expert witness fees, and court costs. If the appropriation is not sufficient to cover the costs for the 1985 biennium, the department may present a supplemental to the next Legislature. The attorney general shall report to the Legislative Finance Committee in August 1984 and the next Legislature in January 1985 on how this appropriation was expended.

HIGHWAY TRAFFIC SAFETY									
1. Operations									
67,680		1,373,094		1,440,774		70,283	1,373,903		1,444,186
2. Audit									
2,625		875		3,500					
Total									
70,305		1,373,969		1,444,274		70,283	1,373,903		1,444,186
BOARD OF CRIME CONTROL									
1. Operations									
429,314		73,412		502,726	424,367		85,640		510,007
2. Audit									
7,000		7,000		14,000					
Total									
436,314		80,412		516,726	424,367		85,640		510,007
DEPARTMENT OF REVENUE									
1. Director's Office									
a. Operations									
166,214	83,697		5,478	255,389	165,065	74,560		3,229	242,854
b. Audit									
70,350	18,900		15,750	105,000					
c. Legal Fees									
35,000				35,000					
2. Central Services									
926,390		5,000	680	932,070	924,563		5,000	705	930,268
3. Research and Information Division									
1,123,855			324,488	1,448,343	1,107,189			318,914	1,426,103
4. Legal and Investigation Program									
334,908		262,766	241,520	839,194	342,933		258,133	236,464	837,530
5. Child Support Enforcement									
332,537		898,190		1,230,727	325,820		884,095		1,209,915
6. Income Tax Division									
2,232,383				2,232,383	2,180,466				2,180,466
7. Natural Resources and Corporation Tax									
1,053,608				1,053,608	1,080,166				1,080,166
8. Miscellaneous Tax									
426,170	65,502			491,672	409,013	66,313			475,326
9. Motor Fuel Division									
618,944				618,944		655,088			655,088
10. Property Assessment Division									
10,810,602				10,810,602	10,552,885				10,552,885
Total									
17,512,017	787,043	1,165,956	587,916	20,052,932	17,088,100	795,961	1,147,228	559,312	19,590,601

Funds up to $300,000 remaining within the 1983 biennium appropriation to the property assessment division contained in House Bill 2 of the November 1981 Special Session for defense of the railroad litigation are reappropriated for the 1985 biennium to deal with legal issues arising under federal nondiscriminatory taxation acts such as the Tax Equity and Fiscal Responsibility Act, the Railroad Revitalization and Regulatory Reform Act, and any subsequent federal legislation that directs the state to take a nondiscriminatory posture in the taxation of entities doing business within the state. This appropriation may be used only for attorney fees, expert witnesses, and extraordinary expenses associated solely with resolving disputes related to such legal issues. $35,000 of this $300,000 remaining appropriation (from House Bill No. 2 of the November 1981 Special Session) shall be transferred to the legislative council for a study of the tax classification system if HJR 31 passes the legislature.

Item 1c is a biennial appropriation to pay legal fees incurred by the department.

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Fiscal 1984					Fiscal 1985				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

If the Child Support Enforcement Program is required by a change in federal legislation to pay operating costs from collections, the program is authorized to substitute the Child Support fees and collections for the federal appropriation up to the total amount authorized by the Legislature for operations in the 1985 biennium. In the event established cutoff dates related to the change in funding do not allow for adequate funding of the operating costs from fees and collections, the Department of Administration is authorized to make a loan to the Child Support Enforcement Program from the general fund. The loan may not exceed an amount equal to deposits made by the Child Support Enforcement Program to the general fund for the 6-month period prior to the funding change and must be paid back within 2 years.

The Department of Revenue is authorized to employ necessary personnel and to spend funds received from local government contracts under section 7-14-302, MCA, to administer the local option motor fuel excise tax.

Liquor Division revolving funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated. During the 1985 biennium, the division shall attempt to return at least 13% of net sales. Net sales are gross sales less discounts and all taxes collected. The division shall attempt to limit operational expenses of the liquor merchandising system to not more than 15% of net sales. Operational expenses may not include product costs, freight charges, or expenses allocable to other divisions or licensing bureau expenses.

The division retains full authority to determine store operating hours and the number and location of stores and employees. Nonprofitable or marginally profitable state stores shall be closed or converted to agency stores in an orderly manner. Agency stores shall be closed if the division considers them marginally profitable and other state stores or agencies are located within a reasonable distance.

All royalties attributable to the marketing of point of sale system software developed under contract for the liquor division are to be deposited in the revolving fund. Such royalties may be expended only for further development of the liquor management information and point of sale systems. Expenditures of these royalty moneys are specifically excluded from the 15% of net sales limitation imposed on operation expenses.

The Department's Property Assessment Division appropriation was reduced by $66,078 in FY 1984 to fund HB 526 to satisfy the judgment of the District Court in the case of The Conrad National Bank of Kalispell v. The Department of Revenue. The Department should make a good faith effort to recover the county's share of the liability in this case.

DEPARTMENT OF ADMINISTRATION

1. Central Administration									
a. Operations									
277,523			277,523	279,552					279,552
b. Audit									
35,000		41,000	76,000						
c. Travel									
1,600			1,600						
2. Governor's Elect Program									
				30,000					30,000
3. Accounting									
a. Operations									
892,169			892,169	915,580					915,580
b. Travel									
1,380			1,380						
c. Audit									
12,000			12,000						
4. Architecture & Engineering									
a. Operations									
477,839			477,839		478,614				478,614
b. Study of Construction Laws									
25,000			25,000						
5. General Services									
a. Operations									
640,583		2,331,980	2,972,563	672,107				2,475,443	3,147,550
b. Security Improvements									
24,191			24,191						
c. Capital Projects									
		50,000	50,000					50,000	50,000
6. Purchasing									
515,458			515,458	518,858					518,858

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
7. Central Stores				1,847,106	1,847,106				1,986,591	1,986,591
8. Surplus Property				208,952	208,952				206,084	206,084
9. Building Standards		904,116			904,116		878,301			878,301
10. Mail & Management				805,781	805,781				879,307	879,307
11. Treasury	418,277			25,732	444,009	402,931			25,467	428,398
12. Investments										
a. Operations				691,045	691,045				678,137	678,137
b. Audit				30,000	30,000				30,000	30,000
13. Communications				3,865,501	3,865,501				4,433,878	4,433,878
14. SRS Amortization & Major Maintenance				19,132	19,132				19,132	19,132
15. Personnel	916,764	4,172			920,936	922,342	4,194			926,536
16. Group Benefits	45,776			145,366	191,142	45,517			154,613	200,130
17. Training	56,142			67,641	123,783	55,646			70,282	125,928
18. State Insurance	56,250			1,377,212	1,433,462	58,750			767,450	826,200
19. Passenger Tramway Safety	11,835				11,835	12,465				12,465
20. Workers' Compensation		308,524			308,524		293,949			293,949
21. Public Employees' Retirement System										
a. Operations				772,610	772,610				781,663	781,663
b. Audit				22,500	22,500					
22. Teachers' Retirement										
a. Operations				326,382	326,382				344,728	344,728
b. Audit				17,500	17,500					
c. Systems Development Project				181,830	181,830				27,500	27,500
23. Graphics				346,364	346,364				358,787	358,787
24. Publications				1,501,189	1,501,189				1,613,894	1,613,894
25. Computer Services Division										
a. Operations				4,754,232	4,754,232				5,087,068	5,087,068
b. Audit				12,000	12,000					
26. Records Management				330,068	330,068				323,951	323,951
27. Systems Development				686,883	686,883				691,970	691,970
28. State Tax Appeals Board										
a. Operations	305,924				305,924	306,630				306,630
b. Per Diem	6,693				6,693					
c. Contracted Services	43,594				43,594	33,750				33,750
Total	4,261,159	1,719,651		20,458,006	26,438,816	4,254,128	1,655,058		21,005,945	26,915,131

Items 1c, 3b, 4b, and 5b are biennial appropriations.

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Fiscal 1984					Fiscal 1985				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

Should the economy improve to the point there is a need for more building standard inspectors, a maximum of 3 FTE and operating expenses and equipment for the 3 FTE may be added by budget amendment to the building standards division.

In item 5c in the proprietary fund is $50,000 that is appropriated out of the capital project fund.

The department may charge agencies a maximum of $3.11 per square foot for rent for fiscal 1984 and $3.34 per square foot for fiscal 1985. At the end of fiscal 1985 the maximum the department may carry over is a 45-day operating balance of $420,000.

Item 14 is appropriated out of the SRS building debt service fund.

Items 21 and 22 are appropriated out of the pension trust fund.

If utility costs exceed amounts approved by the legislature, supplemental funds may be requested by the general services division of the department of administration.

Item 22c is to complete and operate the systems development project for the data processing system for Teachers' Retirement. The funds provided are sufficient to complete the project and further requests for funding the project may not be made.

Items 28b and 28c are appropriated for the "34 percent" property tax issue.

The department must develop a long-range telecommunication plan and monitor communication activity during the biennium. Telephone systems, land mobile radio systems, data transmission devices, their components, or any other telecommunications equipment or facilities may not be leased, purchased, rented, otherwise procured, or installed by any state government agency unless approval is granted by the department of administration. Approved purchases or installations should be compatible with the statewide communications plan and should maximize the state dollar. This is not to be taken as a reason to unduly delay communications activities of other state agencies, nor should this affect repair or installation of presently owned equipment. The department may not require any local government unit to purchase or use high band radio equipment.

The department of administration is encouraged to obtain vendor input for long-range planning of state telephone systems, data transmission systems, and land mobile radio systems. Input from vendors should be utilized in the long-range planning process; however, the input should be of an advisory nature only and may not be considered binding upon either the department of administration or the state of Montana. In approving such equipment or systems, the department shall:

(a) consult with and consider the recommendations and advice of the state agency directors;

(b) ensure compliance with statewide planning efforts; and

(c) complete the land mobile radio portion of the statewide telecommunications plan prepared by the Department of Administration prior to approving the purchase, acquisition, or installation of any new high band equipment, excepting the repair or replacement of existing equipment.

The department shall create an advisory council to participate in the development of the land mobile radio portion of the statewide telecommunications plan.

The Department of Administration shall report semiannually to the Legislative Finance Committee the progress achieved on the statewide communication plan, including but not limited to state and local agency participation and coordination in the plan.

If the Department of Administration exercises its right to convert the existing lease agreement between the state and Centel Business Systems to a lease with an option to purchase as provided in section 16.12 of the lease agreement, then the department is authorized, in its discretion, to issue lease participation certificates to finance such purchase options in a manner and form determined to be in the best interests of the state. The department is further authorized to employ financial consultants and counsel considered necessary to issue lease participation certificates, the cost of which may be paid from the proceeds of the certificates.

The department may expend available self-insurance reserves and revenues to pay any deficit that may be incurred for property insurance premiums due and payable through June 30, 1985.

ADJUTANT GENERAL

1. Administration Program									
a. Operations									
192,439				192,439	201,808				201,808

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	Fiscal 1984				Fiscal 1985			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
b. Audit	5,250			5,250					
2. Army National Guard	990,627		471,014	1,461,641	1,000,404		416,574		1,416,978
3. Air National Guard	127,983		694,052	822,035	138,441		725,670		864,111
4. Veterans' Affairs	467,097			467,097	468,663				468,663
Total	1,783,396		1,165,066	2,948,462	1,809,316		1,142,244		2,951,560
DISASTER AND EMERGENCY SERVICES									
1. Disaster Coordination									
a. Operations	219,841		220,341	440,182	222,525		223,433		445,958
b. Audit	3,413		3,412	6,825					
2. Nuclear Civil Protection									
a. Operations			221,360	221,360			224,434		224,434
b. Audit			2,925	2,925					
Total	223,254		448,038	671,292	222,525		447,867		670,392
DEPARTMENT OF HIGHWAYS									
1. Construction									
a. Operations	25,367,318		122,977,523	148,344,841		21,999,132	121,989,937		143,989,069
b. Accelerated Construction Interstate	1,743,836			1,743,836		15,147,370			15,147,370
c. Reconstruction T. ..st	8,720,742			8,720,742		9,802,905			9,802,905
2. Operations									
a. Operations	4,833,282		1,514,605	6,347,887		4,824,456	1,425,901		6,250,357
b. Audit	65,000			65,000					
3. Preconstruction	4,081,095		7,579,177	11,660,272		3,775,107	7,910,916		10,786,023
4. Service Revolving				2,814,801	2,814,801				2,854,660	2,854,660
5. Maintenance									
a. Operations	40,286,578			40,286,578		41,736,132			41,736,132
b. Street Lights	400,000			400,000		200,000			200,000
6. Equipment	3,100,000			10,018,136	13,118,136	2,568,000		10,617,956	13,185,956
7. Motor Pool				719,071	719,071				670,685	670,685
8. Stores Inventory	13,193,639			13,193,639		14,284,140			14,284,140
9. Gross Vehicle Weight Division	3,084,824			3,084,824		3,107,207			3,107,207
10. Capital Outlay	580,208			580,208		587,245			587,245
Total	105,456,522		132,071,305	13,552,008	251,079,835	118,031,694	130,426,754	14,143,301	262,601,749

In the event additional federal highway funds become available, additional spending authority and additional FTE may be requested through budget amendment.

Item 1b is contingent upon passage of Senate Bill 454. In addition to the funds appropriated in that item, the amount needed to pay principal and interest on bonds issued under the authority of Senate Bill 454 is appropriated from the highway earmarked account.

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	Fiscal 1984					Fiscal 1985				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

If Senate Bill 454 is enacted, the appropriations in 1a and 1b will be combined for fiscal 1984 and fiscal 1985.

Item 1c is contingent upon the passage of House Bill 16 and House Bill 730.

The Legislature anticipates the department will proceed during the 1985 biennium with the projects and right-of-way acquisitions listed in its revised work plan presented to the Legislative, Judicial, and Administrative subcommittee of Appropriations — Finance and Claims and spend funds substantially in accordance with the estimated expenditures shown on that work plan. The department shall report to the 1985 Legislature any significant deviation in projects undertaken or funds expended from that work plan. The department of highways is directed to:

(1) develop and institute a comprehensive construction project planning system. This system will be operational no later than July 1, 1985, and will be the basis for:

(a) project scheduling;

(b) project monitoring;

(c) manpower planning;

(d) work measurement and evaluation;

(e) cash flow projections;

(f) long- and short-range construction goals; and

(g) budget preparation.

(2) institute a cash forecasting system to minimize cash reserves;

(3) submit to the 1985 legislature a construction work plan for the 1987 biennium that is detailed by year, project phase, and fund. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1987 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year, fund, and project phase.

(4) institute a maintenance management system for the maintenance division that incorporates equipment needs and usage. This system will be operational no later than July 1, 1985.

(5) submit to the 1985 legislature a maintenance work plan for all operational systems that ties directly to the maintenance division budget request for the 1985 biennium;

(6) Submit a written progress report semiannually to the Legislative Finance Committee on the projects in the work plan and the above systems.

The Legislature anticipates that the maintenance division will receive by budget amendment spending authority for any funds in excess of $556,097 in fiscal 1984 and $587,663 in fiscal 1985 that it collects from damage situations.

Item 5b is for the installation of 2,000 energy-efficient street lights. This expenditure will be reimbursed by funds from the Bonneville Power Administration which will be deposited in the stores inventory earmarked revenue account.

The equipment division budget contains funds for 2,200,000 gallons of gasoline each year and 550,000 gallons of diesel fuel in fiscal 1984 and 600,000 gallons in fiscal 1985. The anticipated price of each gallon of fuel is $1.15 in fiscal 1984 and $1.30 in fiscal 1985. In the event the price of fuel exceeds these estimates, the division may request additional spending authority by budget amendment for funds sufficient to purchase the anticipated number of gallons of fuel. In the event that fuel prices remain at existing levels or decrease, the division shall revert any excess funds.

Funding may be transferred among all programs including stores inventory to reflect actual personal services expenditures. This is not to be construed as permitting the transfer of full-time equivalent employees between programs, nor may there be an increase in the total number of appropriated full-time equivalent employees.

TOTAL SECTION A

47,303,622 120,212,511 136,947,287 34,960,277 339,423,697 46,707,090 132,365,070 135,244,439 36,074,040 350,390,639

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	Fiscal 1984					Fiscal 1985			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
B. HUMAN SERVICES										
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES										
1. Financial Management	281,691	85,000	431,429		798,120	245,514	85,000	469,584		800,098
2. Environmental Sciences										
a. Food & Consumer Safety	351,874	204,000			555,874	353,428	204,000			557,428
b. Solid Waste Management	126,674	980,048	217,533		1,324,255	128,430	1,001,585	161,651		1,291,666
c. Air Quality	323,787		544,692		868,479	310,657		544,078		854,735
d. Occupational Health	173,227				173,227	182,017				182,017
e. Water Quality	219,406	20,058	1,146,628		1,386,092	222,736	20,209	1,138,807		1,381,752
f. Subdivision Review		211,648			211,648		225,537			225,537
g. Administration	59,124	22,341	31,992		113,457	59,229	22,485	32,469		114,183
h. Hazardous Waste Cleanup		220,000	1,980,000		2,200,000					
3. Management Services Division										
a. Operations	146,121		88,028		234,149	148,904		87,564		236,468
b. Laboratory	409,167	109,953	188,222		707,342	414,163	61,530	197,294		672,987
4. Dental Bureau										
a. Dental Program	67,572				67,572	67,232				67,232
b. Health Education			34,671		34,671			35,759		35,759
c. Hypertension			78,105		78,105			77,500		77,500
5. Nursing Bureau										
a. Administration	125,452		25,873		151,325	127,908		25,971		153,879
b. Venereal Disease	10,685		66,223		76,908	11,371		67,727		79,098
c. Vaccination	20,861		139,703		160,564	21,550		142,771		164,321
d. Family Planning			929,934		929,934			932,975		932,975
6. Clinical Services Division										
a. Administration	224,090		863,976		1,088,066	223,957		690,835		914,792
b. Handicapped Child Services			647,445		647,445			682,882		682,882
c. Newborn Transport			50,000		50,000					
d. Diabetes			34,157		34,157			19,157		19,157
e. Tumor Registry	52,647				52,647	53,433				53,433
f. Child Nutrition			1,925,033		1,925,033			1,926,479		1,926,479
g. Women Infant Children Food Program			4,597,281		4,597,281			4,804,064		4,804,064
h. Improved Pregnancy Outcome				300,000			300,000			
7. Licensing and Certification Bureau	130,274		393,531		523,805	145,658		392,683		538,341
8. Emergency Medical Services	321,543	30,000	167,128		518,671	311,686	30,000	182,565		524,251
9. Health Planning	106,649		233,082		339,731	105,643		233,615		339,258
10. Legal Unit			159,050		159,050			160,115		160,115

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	Fiscal 1984					Fiscal 1985			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
11. Director's Office	268,468		83,499		351,967	273,363		83,499		356,862
12. Audit			39,300		39,300					
13. Renal Program	125,000				125,000	125,000				125,000
Total	3,544,312	1,883,048	15,396,515		20,823,875	3,531,879	1,650,346	13,090,044		18,272,269

Items 2h and 6h are biennial appropriations.

Revenue generated from fees charged hazardous waste producers must equal at least $21,828 in fiscal 1984 and $21,194 in fiscal 1985. If these amounts are not collected in either fiscal year, operation of the hazardous waste program will be returned to the Environmental Protection Agency. All fees collected shall be deposited in the general fund.

Federal funds received for radiation projects may be added by budget amendment.

Included in Item 2b is $51,000 of federal spending authority in fiscal 1984 for an inventory of hazardous waste sites, which is a biennial appropriation.

Item 2c includes $30,000 general fund for the biennium for monitoring air quality in the Scobey area and can be used only when Saskatchewan Power Units one and two are both at full operating capacity.

The department will continue grants to counties for air quality activities at the level of $95,000 in each fiscal year.

The subdivision bureau will be operated solely from fees collected for subdivision review.

In item 3b, $48,500 from fee revenues is authorized only for equipment purchases in the 1985 biennium.

In item 4c, $77,500 is allocated for the hypertension program in fiscal 1985. If the federal requirement for hypertension is less than $77,500 in fiscal 1985, all remaining funds from the hypertension allocation shall be distributed to the county for emergency medical services training activities.

Included in the appropriation in item 6a is $138,904 of federal block grant carryover funds. The department is responsible for obtaining the required match for these funds. If no match is obtained, the carryover will revert to the federal government.

In item 9, if federal funds are less than $125,892 in fiscal 1985, this program will cease and any remaining general fund will revert.

The total appropriations for the department include $1,546,949 in fiscal 1984 and $1,407,745 in fiscal 1985 from the Maternal and Child Health Block Grant and $607,264 in fiscal 1984 and $607,264 in fiscal 1985 from the preventative health block grant. To the extent revenues from these grants exceed those amounts, it shall be distributed to the counties. To the extent revenues from these grants are less than these amounts, distributions to the counties shall be reduced.

DEPARTMENT OF LABOR & INDUSTRY

1. Director's Office			177,736		177,736			179,271		179,271
2. Labor Standards	480,924	2,800	17,000		500,724	488,622	2,800	18,000		509,422
3. Personnel Appeals										
a. Operations	353,639		8,000		361,639	356,223		8,000		364,223
b. Case Printing	4,000				4,000				3,500	3,500
4. Human Rights	176,426		138,274		314,700	168,874		127,781		296,655
5. Employment Security Division										
a. Job Services			14,291,031		14,291,031			14,655,129		14,655,129
b. Unemployment Insurance			2,317,918		2,317,918			2,377,566		2,377,566
c. Central Services			4,485,373		4,485,373			4,647,367		4,647,367
d. CETA Subgrants			11,373,451		11,373,451			11,373,451		11,373,451

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	Fiscal 1984					Fiscal 1985			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
6. Workers' Compensation										
a. Administration Operations	2,606,471		56,211		2,662,682		2,124,714	57,934		2,182,648
b. Social Security Offsets	95,000				95,000	102,000				102,000
c. State Insurance Fund	2,435,694				2,435,694		2,587,112			2,587,112
d. Insurance Compliance	705,060	501,725			1,206,785	623,308	490,585			1,113,893
e. Safety & Health	901,602		38,547		940,149		874,345	38,601		912,946
f. Audit	56,000				56,000					
Total	1,815,049	6,504,292	32,903,541		41,222,882	1,739,027	6,079,556	33,483,100	3,500	41,305,183

Item 3b is for indexing and printing of personnel appeals cases. Any fund balance remaining from fees charged for copies of cases shall revert at the end of fiscal 1985.

Included in item 4 are funds sufficient to reduce the caseload backlog to a maximum of 116 cases by June 30, 1985.

In item 5a, federal spending authority totaling $4,561,000 in fiscal 1984 and $4,835,000 in fiscal 1985 is to provide for current level operations of all existing job service offices and up to 155 FTE. If federal funds for job services are less than these amounts, the department may supplement federal funds with state unemployment taxes collected specifically for the administration of local job service offices.

Item 6b is for social security offset payments. No transfers may be made out of this line item.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

1. Assistance Payments								
a. Operations	590,307	1,826,352	2,416,659	603,859		1,886,736	2,490,595	
b. Benefits								
i. AFDC	7,233,141	17,864,151	25,097,292	7,498,510		18,351,398	25,849,908	
ii. Nonresident General Assistance	50,000		50,000	50,000			50,000	
iii. Other Benefits	191,204	13,264,011	13,455,215	206,049		12,706,259	12,912,308	
Total	8,064,652	32,954,514	41,019,166	8,358,418		32,944,393	41,302,811	
2. Social Services								
a. Operations	1,126,528	7,575,373	8,701,901	1,120,677		7,609,909	8,730,586	
b. Benefits								
i. Foster Care								
A. Foster Family	771,945	1,107,818	1,879,763	824,864		1,167,684	1,992,548	
B. Other Foster Care	1,129,169	1,620,470	2,749,639	1,206,577		1,708,040	2,914,617	
ii. Medicaid Prescreening	331,035	(117,600)	213,435	348,088		(119,505)	228,583	
iii. Other Benefits	1,582,007	4,526,962	6,108,969	1,679,750		4,503,532	6,183,282	
Total	4,940,684	14,713,023	19,653,707	5,179,956		14,869,660	20,049,616	
3. Eligibility Determination		6,314,827	6,314,827			6,310,483	6,310,483	
4. Administration and Support								
a. Operations	583,656	2,232,784	2,816,440	588,329		2,259,605	2,847,934	
b. Legislative Audit	25,488	94,512	120,000					

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	Fiscal 1984				Fiscal 1985			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
Total									
609,144		2,327,296		2,936,440	588,329		2,259,605		2,847,934
5. Medical Assistance									
a. Operations									
961,314		1,481,912		2,443,226	824,824		1,544,915		2,369,739
b. Claim System Conversion									
100,000		900,000		1,000,000					
c. Benefits									
i. Medicaid - Institution Reimbursement									
3,778,036		6,117,291		9,895,327	3,993,885		7,005,521		10,999,406
ii. Medicaid - All Other									
29,553,905		47,852,865		77,406,770	29,786,296		52,247,018		82,033,314
iii. Other Benefits									
742,213		1,999,144		2,741,357	786,746		2,117,187		2,903,933
iv. Contingency									
4,855,461				4,855,461					
Total									
39,990,929		58,351,212		98,342,141	35,391,751		62,914,641		98,306,392
6. Audit and Program Compliance									
461,509		758,884		1,220,393	464,302		768,978		1,233,280
7. Vocational Rehabilitation									
512,989	626,065	3,373,168		4,512,222	613,207	663,629	3,383,253		4,660,089
8. Disability Determination									
		2,049,333		2,049,333			2,186,273		2,186,273
9. Visual Services									
262,688		526,142		788,830	271,495		528,446		799,941
10. Developmental Disabilities									
a. Operations									
512,465		516,307		1,028,772	508,648		516,718		1,025,366
b. Benefits									
10,690,914		2,518,216		13,209,130	11,538,763		2,548,733		14,087,496
Total									
11,203,379		3,034,523		14,237,902	12,047,411		3,065,451		15,112,862
11. DDPAC									
a. Operations									
		87,500		87,500			87,500		87,500
b. Benefits									
		162,500		162,500			162,500		162,500
Total									
		250,000		250,000			250,000		250,000
TOTAL SRS									
66,045,974	626,065	124,652,922		191,324,961	62,914,869	663,629	129,481,183		193,059,681

In each fiscal year, 10% of the Low Income Energy Block Grant shall be transferred to the Social Services Block Grant. If the transfer is greater than $1,110,730 in either fiscal year, a general fund amount equal to that amount above $1,110,730 shall go into the contingency fund.

Item 1bi is for AFDC payments for an average case load of 6,800. The payment standard may not exceed 51% of the poverty index. Should the average case load be less than 6,800, a pro rata portion of spending authority shall go into the contingency fund for each case below 6,800.

No funds may be transferred out of item 1bii.

The department may not consider donated funds obtained by foster care providers when allocating or contracting state payments for foster care services.

In fiscal 1984 foster family payment rates shall be $257 for children 0 to 12 years of age and $321 for children 13 years and older; and in fiscal 1985 the foster family payment shall be $272 for children 0 to 12 years of age and $340 for children 13 years and older. In-state group home providers shall receive on the average a 6% increase in funds per client disbursed from the department of SRS for each fiscal year.

No FTE or spending authority may be transferred into or out of the eligibility determination program.

Items 5b and 5civ are biennial appropriations.

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Fiscal 1984					Fiscal 1985				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

Item 5cii includes medicaid funding for 6,800 AFDC recipients. If these funds are not needed to support the AFDC case load, the funds may not be used to expand the scope and duration of the medicaid program.

Item 5civ may be used for the following benefits if the required conditions occur:

1. AFDC - if the average fiscal year case load exceeds 6,800.

2. Other Medicaid - if optional medicaid services are no longer available because the average fiscal year AFDC case load exceeds 6,800 or if the number of nursing home days is greater than 1,263,327 in fiscal 1984 or 1,259,875 in fiscal 1985.

3. Foster Care - if expenditures for foster care exceed the appropriation for foster care after giving each provider not more than a 6% increase in funding disbursed by SRS each year of the 1985 biennium.

4. SSI - if the number of persons eligible for Supplemental Security Income payments is greater than 752 in fiscal 1984 or 797 in fiscal 1985, not including those persons who were budgeted for SSI payments under the medicaid waiver or the developmental disabilities budget.

5. Replace Federal Medicaid Funds - if the average federal medicaid matching rate is below .6369 in fiscal 1985, these funds may be used to supplement the federal funds due to the lower medicaid rate.

The contingency fund shall be used to maintain AFDC, optional medicaid, nursing homes, foster care, and SSI benefits for those who qualify under rules and laws in effect on January 1, 1983, but may not be used to directly or indirectly expand the scope or duration of services offered under a program.

The Department of Social and Rehabilitation Services may use these funds and is appropriated the corresponding matching federal, private, or county funds for one or more of the benefits defined above if, for each benefit for which the funds are used, the department certifies and provides written justification in which the Office of Budget and Program Planning concurs that the required condition has occurred.

Item 6 contains funding for two FTE who shall work solely on medicaid.

No FTE or spending authority may be transferred into or from the disability determination program.

The cost per case reviewed by the disability determination program may not increase more than 6% per year above the fiscal 1983 estimated cost of $195.

The department may not consider donated funds obtained by developmental disability providers when allocating or contracting state payments for developmental disability services.

Within appropriated funds for the DDPAC program, no more than $175,000 for the biennium is for the operation of the developmental disabilities planning and advisory council. Any federal money received above this amount may be spent only to improve direct client services as recommended by the council and approved by the SRS director.

It is the Legislature's intent that DDPAC grant money be used so that the foster care program for the developmentally disabled is funded at the same level as proposed in the executive budget. The DDPAC grant money shall be used as proposed in the executive budget unless the department can utilize other funding sources.

TOTAL SECTION B									
71,405,335	9,013,405	172,952,978		253,371,718	68,185,775	8,393,531	176,054,327	3,500	252,637,133

C. NATURAL RESOURCES

PUBLIC SERVICE COMMISSION									
1. Operations									
1,442,885		41,989		1,484,874	1,431,797		36,974		1,468,771
2. Audit									
11,000				11,000					
3. Additional Operations									
70,349				70,349	173,062				173,062
Total									
1,524,234		41,989		1,566,223	1,604,859		36,974		1,641,833
DEPARTMENT OF LIVESTOCK									
1. Central Services									

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
a. Operations	63,452	259,477			322,929	65,080	266,627			331,707
b. Audit	3,000	12,000			15,000					
2. Diagnostic Lab	328,168	351,379			679,547	346,252	370,657			716,909
3. Disease Control		509,348			509,348		517,471			517,471
4. Milk and Eggs	197,382		14,500		211,882	199,578		14,500		214,078
5. Inspection and Control		1,953,747			1,953,747		1,949,327			1,949,327
6. Beef and Pork Research & Marketing			505,000		505,000			505,000		505,000
7. Predatory Animal		307,809			307,809		318,497			318,497
8. Rabies and Rodent Control	89,745	15,000			104,745	87,184	15,000			102,184
Total	681,747	3,408,760	519,500		4,610,007	698,094	3,437,579	519,500		4,655,173
DEPARTMENT OF AGRICULTURE										
1. Centralized Services										
a. Operations	207,992	27,617	51,175	3,885	290,669	204,591	32,345	50,730	3,885	291,551
b. Audit	12,108	1,915	3,977		18,000					
c. Additional Operations				97,969	97,969				99,325	99,325
2. Rural Development			52,445		52,445			53,041		53,041
3. Hail Insurance			158,089		158,089			160,488		160,488
4. Crop and Livestock	61,006		24,735		85,741	66,986		24,735		91,721
5. Marketing and Transportation	30,897		14,200		45,097	31,338		14,200		45,538
6. Wheat Research and Marketing			822,889		822,889			859,049		859,049
7. Environmental Management										
a. Operations	676,392	103,322	262,159		1,041,873	700,133	104,572	194,075		998,780
b. Additional Operations	25,000				25,000	25,000				25,000
8. Plant Industry	470,379	541,820	1,000	38,697	1,051,896	485,426	537,846	1,000	39,799	1,064,071
Total	1,483,774	674,674	1,390,669	140,551	3,689,668	1,513,474	674,763	1,357,318	143,009	3,688,564

Item 1a Federal and Special Revenue includes expendable trust funds of $12,113 in fiscal 1984 and $12,086 in fiscal 1985 for hail insurance and $5,189 in fiscal 1984 and $5,196 in fiscal 1985 for federal rural development rehabilitation funds.

Items 2 and 3 are appropriated out of the expendable trust account.

The above appropriation includes $185,020 in fiscal 1984 and $114,164 in fiscal 1985 of Environmental Protection Agency funds. To the extent additional Environmental Protection Agency funds become available, the department is authorized to spend the federal funds. The general fund appropriation is reduced a like amount.

The appropriation in item 7b is contingent upon increased fees as provided in HB 802.

Appropriation in 1c will require an interaccount loan from general fund for program initiation, which loan may be extended through but not beyond June 30, 1985, pending receipt of bond proceeds.

DEPARTMENT OF STATE LANDS

1. Central Management

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
a. Operations	854,360		119,701	85,645	1,059,706	836,492		122,755	90,060	1,049,307
b. Audit	22,045		2,490	2,305	26,840					
2. Reclamation		923,132	7,526,445		8,449,577		943,570	7,232,132		8,175,702
3. Land Administration	307,234	86,509			393,743	303,616	87,438			391,054
4. Resource Development		707,968			707,968		713,373			713,373
5. Forestry	4,077,566	1,506,675	1,257,751		6,841,992	4,264,916	1,525,130	1,235,136		7,025,182
Total	5,261,205	3,224,284	8,906,387	87,950	17,479,826	5,405,024	3,269,511	8,590,023	90,060	17,354,618

Funds saved up to $130,769 by cost efficiencies in any department of state lands' program may be utilized by the department of state lands for developing data processing.

It is the intent of the 48th Legislature that future appropriations from Resource Indemnity Trust Interest funds not be made to fund general operating expenses of state agencies.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS

1. Centralized Services									
a. Operations	1,565,895	849,768	1,768,113	4,183,776		1,637,320	850,633	1,687,765	4,175,718
b. Audit	55,000			55,000					
2. Ecological Services		583,867	235,434		819,301		595,146	235,434		830,580
3. Fisheries		2,479,787	521,274		3,001,061		2,423,841	541,204		2,965,045
4. Law Enforcement		3,917,683	66,618		3,984,301		3,914,076	67,444		3,981,520
5. Wildlife		2,017,116	1,635,000		3,652,116		2,083,654	1,665,500		3,749,154
6. Recreation and Parks	628,519	1,924,856	1,030,535	125,540	3,709,450	659,430	1,935,891	1,030,535	108,454	3,734,310
7. Conservation Education		791,797	75,907		867,704		805,777	75,847		881,624
8. Administration		1,136,447	72,077		1,208,524		1,153,910	73,301		1,227,211
a. Water Rights Lawyer		30,000			30,000		30,000			30,000
Total	628,519	14,502,448	4,486,613	1,893,653	21,511,233	659,430	14,579,615	4,539,898	1,796,219	21,575,162

The appropriations in items 2 and 8 may be transferred to other programs during the biennium with documentation detailing all changes in FTE and funding in the Department of Fish, Wildlife, and Parks.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

1. Centralized Services									
a. Operations	1,121,160	345,190	29,009		1,495,359	1,089,885	371,745	29,686	1,491,316
b. Audit	15,027	4,585	388		20,000				
2. Oil & Gas		972,138			972,138		993,124		993,124
3. Conservation Districts		580,909	4,240		585,149		590,711	4,392	595,103
4. Water Resources	2,768,703	2,377,248	79,214		5,225,165	1,793,525	3,050,151	52,826	4,896,502
a. Cooney Dam		160,474			160,474				
b. Tongue River		209,200			209,200				
c. Intake-Beaver Creek		65,000			65,000				

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
d. Compact Commission Travel	50,000				50,000	50,000				50,000
5. Energy	591,750	3,955,064	1,830,699		6,377,513	554,943	4,336,614	1,443,819		6,335,376
Total	4,546,640	8,669,808	1,943,550		15,159,998	3,488,353	9,342,345	1,530,723		14,361,421

Items 4a, 4b, and 4c are biennial appropriations.

To facilitate the orderly transfer of duties from the Oil and Gas Commission to the Department of Revenue caused by the passage of Chapter 93, L. 1983, DNRC is authorized to transfer the appropriate personnel and earmarked revenue funds to the Department of Revenue during fiscal 1984.

The general fund appropriation of $186,000 to the Water Resources Division for fiscal year 1983 contained in HB 500, Laws of 1981, for a grant to an irrigation district formed to operate the Daly Ditch water project was conditioned for the purpose of operating and maintaining the project for 1 year. This condition is changed to allow the grant for the purpose of operating and maintaining the project for 2 years.

The state special revenue appropriations in item 4 include $25,000 from fees generated from water right transfers under the provisions of SB 401. The department may request additional funds through the budget amendment process.

It is the intent of the 48th Legislature that future appropriations from Resource Indemnity Trust Interest funds not be made to fund general operating expenses of state agencies.

DEPARTMENT OF COMMERCE

1. Business Licensing and Regulation - Program Support	19,917	66,930			86,847	34,730	66,930			101,660
2. Weights and Measures Bureau	436,816				436,816	428,583				428,583
3. Financial Division	683,606				683,606	680,514				680,514
4. Milk Control Bureau		261,917			261,917		264,320			264,320
5. Professional and Occupational Licensing		1,959,014			1,959,014		2,021,852			2,021,852
6. Aeronautics Division		714,245		85,393	799,638		689,085		90,516	779,601
7. Transportation Division	355,448	75,000	4,476,800		4,907,248	349,229	75,000	5,348,233		5,772,462
8. Business Assistance	220,733		30,000		250,733	217,645				217,645
9. Montana Promotion	868,914		350,000		1,218,914	899,798		350,000		1,249,798
10. Housing Division			6,353,038	647,774	7,000,812			6,354,813	657,476	7,012,289
11. Community Assistance										
a. Community Assistance	289,462	12,179,587	7,892,122		20,361,171	294,576	12,194,743	6,501,753		18,991,072
b. Hard Rock Mining		103,203			103,203		104,498			104,498
12. Economic Development Support	269,348	25,246			294,594	269,279	26,451			295,730
13. Indian Affairs Coordinator	96,497				96,497	97,846				97,846
14. Director's Office	1,750			141,587	143,337	1,750			143,842	145,592
15. Centralized Services Division										
a. Operations				441,748	441,748				423,980	423,980
b. Audit				54,300	54,300					
16. Legal Services Division	119,598			165,625	285,223	120,146			162,410	282,556
17. Accounting and Management	356,912				356,912	89,211			267,701	356,912

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
18. Local Government Services	1,462,306			929,817	2,392,123	1,461,600			936,645	2,398,245
19. Public Contractor	26,939				26,939	26,939				26,939
20. Health Facilities Authority				100,000	100,000				100,000	100,000
Total	5,208,246	15,385,142	19,101,960	2,566,244	42,261,592	4,971,846	15,442,879	18,554,799	2,782,570	41,752,094

The appropriations in item 11b are for the biennium. In the event state special revenue funds are not available in item 11b because of the passage and approval of House Bill 446, the same funds, namely $98,778 in fiscal 1984 and $100,073 in fiscal 1985, are hereby appropriated from the general fund.

TOTAL SECTION C	19,334,365	45,865,116	36,390,668	4,688,398	106,278,547	18,341,080	46,746,692	35,129,235	4,811,858	105,028,865

D. DEPARTMENT OF INSTITUTIONS

CENTRAL OFFICE										
1. Director's Office	335,646			33,552	369,198	329,770			33,632	363,402
2. Management Services Division	942,269				942,269	981,259				981,259
3. Alcohol & Drug Abuse Division	219,606	291,242	501,653		1,012,501	230,925	311,343	514,947		1,057,215
4. Corrections Division										
a. Aftercare, Parole & Probation	4,462,186		2,981		4,465,167	4,524,306		3,074		4,527,380
b. Women's Corrections	738,775				738,775	752,207				752,207
c. Corrections Medical Expenses	701,433				701,433	743,520				743,520
5. Mental Health Division	3,980,729		1,519,229		5,499,958	4,115,747		1,529,980		5,645,727
6. Community Pre-Release Centers	151,094				151,094					
7. Audit	35,000				35,000					
Total	11,566,738	291,242	2,023,863	33,552	13,915,395	11,677,734	311,343	2,048,001	33,632	14,070,710

In item 4a, included for contracted services are $677,098 in fiscal 1984 and $717,724 in fiscal 1985 to provide for room and board for 50 inmates at two community pre-release centers other than Alpha House and the Missoula Life Skills Center. If delays occur in the opening of these pre-release centers, the director may utilize the contracted services funds to provide for room and board to house such inmates at the state prison. The director shall notify the Legislative Finance Committee and the Governor's budget office prior to any transfer of funds.

Item 6 reappropriates $151,094 for the biennium of general fund money appropriated in House Bill 2 from the second special session of the 47th Legislature for start-up costs for two new 25-bed pre-release centers, less any amount expended in fiscal 1983 for that purpose.

The department is authorized to maintain an aggregate funding level of $2,236,595 during fiscal 1984 and $2,467,723 during fiscal 1985 for those substance abuse programs that during fiscal 1983 were partially or totally funded under the provision of 53-24-206, MCA. The department is authorized to augment the actual funding available under 53-34-206, MCA, by utilizing available alcohol federal block grant funding to attain the aggregate funding levels specified above except that 25% of each federal fiscal year's block grant must be retained for the following state fiscal year. Expenditures of revenues available under 53-34-206, MCA, when combined with discretionary distribution of the alcohol federal block grant, may not exceed the aggregate funding totals specified above.

Contingent upon passage and approval of House Bill 24, the following general fund appropriations are transferred to the Department of Social and Rehabilitation Services: from item 4a, $595,337 in fiscal 1984 and $625,132 in fiscal 1985; from item 4c, $337 in fiscal 1984 and $357 in fiscal 1985; from item 5, $157,320 in fiscal 1984 and $166,759 in fiscal 1985.

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	Fiscal 1984				Fiscal 1985				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
BOULDER RIVER SCHOOL AND HOSPITAL									
1. General Operations									
10,761,649	12,200	20,050		10,793,899	10,828,345	12,400	17,172		10,857,917
2. Audit									
17,250				17,250					
Total									
10,778,899	12,200	20,050		10,811,149	10,828,345	12,400	17,172		10,857,917
CENTER FOR THE AGED									
1. General Operations									
2,497,345	11,245			2,508,590	2,523,258	11,503			2,534,761
2. Audit									
8,050				8,050					
Total									
2,505,395	11,245			2,516,640	2,523,258	11,503			2,534,761
EASTMONT									
1. General Operations									
2,041,566		4,984		2,046,550	2,059,415		4,984		2,064,399
2. Audit									
7,500				7,500					
Total									
2,049,066		4,984		2,054,050	2,059,415		4,984		2,064,399
MOUNTAIN VIEW SCHOOL									
1. General Operations									
1,573,723		28,927		1,602,650	1,579,923		29,256		1,609,179
2. Audit									
9,200				9,200					
Total									
1,582,923		28,927		1,611,850	1,579,923		29,256		1,609,179
PINE HILLS SCHOOL									
1. General Operations									
2,640,187	24,962	349,564		3,014,713	2,677,685	24,962	349,564		3,052,211
2. Audit									
12,650				12,650					
Total									
2,652,837	24,962	349,564		3,027,363	2,677,685	24,962	349,564		3,052,211
MONTANA STATE PRISON									
1. Care and Custody									
a. Operations									
9,250,700	49,966	39,869		9,340,535	9,267,829	49,966	39,869		9,357,664
2. Ranch and Dairy									
			1,472,289	1,472,289				1,453,100	1,453,100
3. Industry Program									
89,748			449,693	539,441				482,918	482,918
4. Industry Training Program									
183,232			174,097	357,329	128,549			213,562	342,111
5. Canteen									
	400,513			400,513		450,439			450,439
6. License Plate Factory									
	496,041			496,041		522,895			522,895
7. Audit									
12,483				12,483					
Total									
9,536,163	946,520	39,869	2,096,079	12,618,631	9,396,378	1,023,300	39,869	2,149,580	12,609,127

In item 3, general fund totaling $89,748 in fiscal 1984 is a loan for the purposes of purchasing equipment. The department shall track this loan and previous general fund loans separately on the state budgeting and accounting system.

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
The department is authorized to contract for all or part of ranch and dairy management after consulting with the ranch policy board. The department is directed to explore the possibility of profit sharing in the context of contractual ranch and dairy management. Before any hay storage facilities are built or any equipment is purchased, the department shall consult with the ranch policy board.										
The department may budget amend revolving account spending authority for expanded activities within the license plate factory.										
SWAN RIVER YOUTH FOREST CAMP										
1. General Operations	819,800	50,475	28,511		898,786	821,875	50,475	28,766		901,116
2. Audit	6,900				6,900					
Total	826,700	50,475	28,511		905,686	821,875	50,475	28,766		
VETERANS' HOME										
1. General Operations	603,426		1,014,528		1,617,954	535,560		1,266,116		1,801,676
2. Audit	6,900				6,900					
Total	610,326		1,014,528		1,624,854	535,560		1,266,116		1,801,676
The new wing at the Veterans' Home is scheduled to open February 1, 1984. If the start-up date is later than February 1, spending authority shall be decreased by $847.52 per day for the number of days between February 1 and the start-up date.										
WARM SPRINGS/GALEN										
1. General Operations	18,697,270	1,653,423	34,638		20,385,331	16,942,197	1,704,281	17,897		18,664,375
2. Workers' Compensation						896,764				896,764
3. Audit	28,000				28,000					
Total	18,725,270	1,653,423	34,638		20,413,331	17,838,961	1,704,281	17,897		19,561,139
Warm Springs State Hospital is budgeted for an average daily population of 350 patients in fiscal 1984 and 320 in fiscal 1985. Should the actual average daily population be less than the budgeted levels, there shall be a pro-rata personal service reversion for direct care services personnel based on the following direct care ratios: Registered Nurse - 1:11, Licensed Practical Nurse - 1:6.4, Special Duty Aides and Psychiatric Aides - 1:1.9.										
A pro-rata portion of the supplies and materials appropriation directly attributable to the reduction in average daily population referred to above shall also revert.										
Item 1 contains $99,900 for funding through December 31, 1983, for 12.79 FTE food service positions, which will be eliminated once the food services of Warm Springs and Galen are consolidated. Should the consolidation occur prior to December 31, 1983, a pro-rata portion of the funding for the 12.79 FTE positions described above shall revert. This reversion shall be calculated as $555 per day for each day the consolidation is in place before December 31, 1983.										
YOUTH TREATMENT CENTER										
1. General Operations						1,813,983		38,011		1,851,994
The Warm Springs appropriation assumes the transfer of all patients in the children's treatment unit to the Montana Youth Treatment Center in Billings by June 30, 1984. Should this transfer be delayed past June 30, 1984, the Department of Institutions is authorized to utilize the appropriation for the Montana Youth Treatment Center to maintain services at Warm Springs until such time as the entire transfer is completed. The daily cost of maintaining the children's treatment unit past June 30, 1984, shall be consistent with the expenditure level for the unit as established by the Warm Springs appropriation.										
BOARD OF PARDONS										
1. General Operations	147,474				147,474	148,248				148,248

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
2. Audit	2,300				2,300					
Total	149,774				149,774	148,248				148,248

If utilities expenditures exceed the amounts listed in the following table the institution may ask for a supplemental appropriation. If utilities do not exceed the anticipated amounts, the difference shall be reverted to the general fund.

	Fiscal 1984	Fiscal 1985
Boulder River School & Hospital	558,599	603,621
Center for the Aged	117,056	128,160
Eastmont Training Center	85,047	98,608
Mountain View School	61,930	68,507
Pine Hills School	237,284	262,963
Montana State Prison	498,094	551,552
Swan River Youth Forest Camp	55,366	62,861
Veterans' Home	138,655	164,134
Warm Springs/Galen State Hospital	1,347,403	1,404,880
Corrections Division	25,511	27,814
Women's Prison	26,137	30,549
Youth Treatment Center	-0-	33,232

	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

Title I funding has not been included in the appropriation for any of the institutions. When Title I funding becomes available, it may be added by budget amendment.

TOTAL SECTION D

60,984,091	2,990,067	3,544,934	2,129,631	69,648,723	61,901,365	3,138,264	3,839,636	2,183,212	71,062,477

E. OTHER EDUCATION

BOARD OF PUBLIC EDUCATION										
1. Board Administration										
a. Operations	99,152				99,152	97,982				97,982
b. Audit	2,000				2,000					
Total	101,152				101,152	97,982				97,982
2. Fire Services Training School										
a. Operations	224,483				224,483	216,677				216,677
b. Audit	2,000				2,000					
Total	226,483				226,483	216,677				216,677
3. Montana School for the Deaf & Blind										
a. Administration	163,013				163,013	164,543				164,543
b. General Services	189,963				189,963	179,373				179,373

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	Fiscal 1984				Fiscal 1985			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
c. Utilities									
109,019				109,019	120,059				120,059
d. Student Services									
550,280		30,000		580,280	553,627		30,000		583,627
e. Education									
853,201		385,965		1,239,166	875,373		359,296		1,234,669
f. Title VI-C									
30,000				30,000	30,000				30,000
g. Audiological Services									
1,439,203				1,439,203					
h. Audit									
15,000				15,000					
Total									
3,349,679		415,965		3,765,644	1,922,975		389,296		2,312,271

Item 3(c) is for utilities expense only. Any unexpended balance remaining at the end of each fiscal year shall revert to the state general fund.

Item 3(f) is for the Title VI-C education program. Any unexpended balance remaining at the end of each fiscal year shall revert to the state general fund.

Item 3(g), audiological services, is for the biennium. Any unexpended balance at the end of fiscal 1985 shall revert to the state general fund. No administrative costs may be taken from item 3(g) for the Montana School for the Deaf and Blind.

Federal special revenue funds appropriated in item 3(e) include $185,965 in fiscal 1984 and $159,296 in fiscal 1985 for Chapter 1 funds. The School for the Deaf and Blind may not budget amend Chapter 1 funds in the event Chapter 1 funds received by the School exceed the amounts appropriated each year of the biennium.

OFFICE OF PUBLIC INSTRUCTION

1. Chief State School Officer								
105,460	20,000		125,460	107,480		15,000		122,480
2. Audit								
42,000			42,000					
3. Basic Skills								
910,443	253,378	195,766	1,359,587	915,274	257,691	195,751		1,368,716
4. Vocational Education								
325,496	382,388		707,884	329,616		382,388		712,004
5. Administrative Services								
a. General Operations								
786,774	493,897	607,604	1,888,275	786,657	505,301	634,736		1,926,694
b. Occupancy of New Space								
12,243			12,243	26,673				26,673
6. Special Services								
141,083	1,295,087		1,436,170	142,147		1,258,968		1,401,115
7. School Transportation								
5,633,000			5,633,000	6,086,000				6,086,000
8. Gifted and Talented Grants								
200,000			200,000					
9. School Lunch								
659,787			659,787	659,787				659,787
10. Secondary Vocational Education								
1,500,000			1,500,000					
11. Adult Basic Education								
140,820			140,820		149,270			149,270
12. Special Education								
26,197,622			26,197,622	27,249,629				27,249,629
13. Special Education Contingency								
500,000			500,000	500,000				500,000
Total								
37,013,908	888,095	2,500,845	40,402,848	36,803,263	912,262	2,486,843		40,202,368

All revenues received in the state traffic education account under the provisions of section 20-7-504, MCA, are appropriated to be distributed as provided in section 20-7-506, MCA.

The appropriations in items 2, 8, and 10 are for the biennium.

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	Fiscal 1984				Fiscal 1985				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total

State and federal funds appropriated in items 1 and 3 through 6 include internal transfers of indirect costs. The amount of indirect costs in excess of $444,292 in fiscal 1984 and $453,088 in fiscal 1985 that are recovered shall revert to the general fund.

If the Public Service Commission has not moved from its present location by January 1, 1984, to new offices in the Department of Highways building, $1,705 will be transferred from the appropriation in item 5b to the Public Service Commission for each month this move is delayed.

Special Education funds in item 12 are for foundation and permissive support of the maximum-budget-without-a-vote for special education.

Special Education contingency funds in item 13 are for emergencies that may arise in special education programs at local districts. A district's board of trustees may apply for an allocation from these funds by presenting to the superintendent of public instruction a child-study team report and an individual education plan for each child relating to this unforeseen expense, a current listing of program, case loads, and related costs. The contingency appropriation is for the biennium and the specific amounts may be transferred between fiscal years.

Notwithstanding other provisions of law, the superintendent may not approve a maximum-budget-without-a-vote for special education which, in the aggregate, exceeds $54,447,251 in the 1985 biennium.

The superintendent of public instruction may use the special education and contingency funds to pay directly to the special education cooperatives if requested by the participating districts in accordance with section 20-7-451(3), MCA.

BILLINGS VOCATIONAL TECHNICAL CENTER									
1. Personal Services									
620,700	453,600	119,348		1,193,648	665,150	464,350	125,500		1,255,000
2. Operating Expenses									
79,346	201,486	32,004		312,836	75,250	236,551	36,800		348,601
3. Equipment									
393	16,307	11,648		28,348	25,831	16,139	700		42,670
4. Audit									
17,500				17,500					
Total									
717,939	671,393	163,000		1,552,332	766,231	717,040	163,000		1,646,271
BUTTE VOCATIONAL TECHNICAL CENTER									
1. Personal Services									
587,836	213,853	210,000		1,011,689	609,400	210,153	231,100		1,050,653
2. Operating Expenses									
37,472	121,861	45,000		204,333	43,062	172,654	30,000		245,716
3. Equipment									
4,049		8,075		12,124	8,776	568	1,975		11,319
4. Audit									
17,500				17,500					
Total									
646,857	335,714	263,075		1,245,646	661,238	383,375	263,075		1,307,688
GREAT FALLS VOCATIONAL TECHNICAL CENTER									
1. Personal Services									
548,000	386,637	184,255		1,118,892	657,350	358,500	179,291		1,195,141
2. Operating Expenses									
56,486	165,849	43,450		265,785	58,432	193,836	47,174		299,442
3. Equipment									
22,500	15,162	9,205		46,867	18,667	13,657	10,445		42,769
4. Audit									
17,500				17,500					
Total									
644,486	567,648	236,910		1,449,044	734,449	565,993	236,910		1,537,352
HELENA VOCATIONAL TECHNICAL CENTER									
1. Personal Services									
1,004,300	359,148	205,772		1,569,220	984,195	416,275	200,541		1,601,011

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
2. Operating Expenses	198,509	183,872	58,800		441,181	170,763	240,266	65,531		476,560
3. Equipment	55,257	6,123	9,100		70,480	36,380	14,648	7,600		58,628
4. Audit	17,500				17,500					
Total	1,275,566	549,143	273,672		2,098,381	1,191,338	671,189	273,672		2,136,199
MISSOULA VOCATIONAL TECHNICAL CENTER										
1. Personal Services	1,024,623	403,200	184,999		1,612,822	976,700	472,100	179,009		1,627,809
2. Operating Expenses	205,700	196,986	56,280		458,966	181,495	255,256	57,145		493,896
3. Equipment	30,500	26,607	721		57,828	45,243	5,897	5,846		56,986
4. Audit	17,500				17,500					
Total	1,278,323	626,793	242,000		2,147,116	1,203,438	733,253	242,000		2,178,691

Receipt of state funds appropriated to the five vocational technical centers is contingent upon each county in which the center resides levying 1.5 mills each fiscal year. Millage received by the centers from the 1.5 mill levy over $823,751 in fiscal 1984 and $842,220 in fiscal 1985 will revert a like amount to the general fund each year.

MONTANA ADVISORY COUNCIL FOR VOCATIONAL EDUCATION										
1. Operations			92,221		92,221			95,231		95,231
2. Audit			3,000		3,000					
Total			95,221		95,221			95,231		95,231
MONTANA ARTS COUNCIL										
1. Operations	126,851		386,474		513,325	113,586		391,583		505,169
2. Audit	4,180		4,180		8,360					
Total	131,031		390,654		521,685	113,586		391,583		505,169

If additional federal funds become available to support the Montana Folklife Project, they may be added by budget amendment.

MONTANA HISTORICAL SOCIETY										
1. Administration	325,889		55,184		381,073	329,171		57,551		386,722
2. Library Program	133,721		14,132		147,853	134,743		14,715		149,458
3. Museum Program	207,979				207,979	210,357				210,357
4. Publications Program	37,510			253,759	291,269	37,316			258,450	295,766
5. Historical Sites Preservation Program	67,275		67,474		134,749	67,841		68,215		136,056
6. Archives Program	203,465		6,665		210,130	203,758		6,736		210,494
7. Education Program	29,495		66,560		96,055	31,792		68,869		100,661
8. Audit	12,775		1,050	3,675	17,500					
Total	1,018,109		211,065	257,434	1,486,608	1,014,978		216,086	258,450	1,489,514

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	Fiscal 1984					Fiscal 1985				
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
MONTANA STATE LIBRARY										
1. General Library Services Program	233,364	389,000	134,825		757,189	243,387	495,000	133,000		871,387
2. Library Network Program	95,552	61,268	67,263		224,083	99,478	64,944	66,360		230,782
3. Institutional Library Services Program	55,452		59,507		114,959	57,100		58,716		115,816
4. Library Services - Physical Handicapped Program	68,751		61,603		130,354	72,172		60,779		132,951
5. Administration Program	78,110		44,362		122,472	78,999		43,705		122,704
6. Audit	8,000				8,000					
Total	539,229	450,268	367,560		1,357,057	551,136	559,944	362,560		1,473,640

Any Library Services and Construction Act funds available for Title II grants, construction, and renovation of public library facilities, under P.L. 98-8, may be budget amended under this act.

TOTAL SECTION E	46,942,762	4,089,054	5,159,967	257,434	56,449,217	45,277,291	4,543,056	5,120,256	258,450	55,199,053

F. HIGHER EDUCATION

All funds, other than plant funds and current unrestricted funds may be spent and are appropriated contingent upon approval by the board of regents by July 1 of each year of the comprehensive program budget containing a detail of revenues and expenditures and anticipated fund balances of current funds, loan funds, and endowment funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities shall be clearly identified in the state budgeting and accounting system.

Programs for the university budgets include instruction, organized research, public service, academic support, student services, institutional support, and operation and maintenance of plant.

Included within other appropriated funds to the six institutions is the sum of $13,074,000 in fiscal 1984 and $14,078,000 in fiscal 1985 from revenues generated under the provisions of Chapter 582, Laws of 1979.

BOARD OF REGENTS										
1. Administration	24,994				24,994	26,090				26,090
COMMISSIONER OF HIGHER EDUCATION										
1. Office Administration	757,876				757,876	766,404				766,404
2. WAMI	1,636,332				1,636,332	1,666,075	101,348			1,767,423
3. WICHE - Student Assistance	75,379	1,714,938			1,790,317		1,902,667			1,902,667
4. WICHE - Administrative Dues	50,000				50,000	53,000				53,000
5. University of Minnesota - Rural Dentistry	168,000				168,000	168,000				168,000
6. SSIG	175,000		210,000		385,000	175,000		210,000		385,000
7. NDSL	75,000				75,000	75,000				75,000
8. Audit	8,000				8,000					
9. Montana Learning Services			175,000		175,000			190,000		190,000
10. Talent Search			128,400		128,400			140,000		140,000
11. Guaranteed Student Loan			766,619		766,619			1,017,899		1,017,899
12. Work Study	290,790				290,790		290,790			290,790

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	Fiscal 1984				Fiscal 1985				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
Total									
3,236,377	1,714,938	1,280,019		6,231,334	2,903,479	2,294,805	1,557,899		6,756,183

	Fiscal 1984			Fiscal 1985		
	General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total
COMMUNITY COLLEGES						
1. Miles Community College						
a. Operations	1,011,505		1,011,505	1,041,471		1,041,471
b. Audit	10,600		10,600			
2. Dawson Community College						
a. Operations	659,055		659,055	718,256		718,256
b. Audit	10,600		10,600			
3. Flathead Community College						
a. Operations	1,385,102		1,385,102	1,484,994		1,484,994
b. Audit	10,600		10,600			
Total	3,087,462		3,087,462	3,244,721		3,244,721

The above appropriation provides 53% of the total unrestricted budgets for the community colleges that shall be approved by the Board of Regents.

The general fund appropriation for each community college includes 53% of the total audit cost. The remaining audit costs shall be paid from local revenues. Audit costs may not exceed $20,000 for each unit for the biennium.

BUREAU OF MINES						
1. Research	1,396,909	53,000	1,449,909	1,416,561	56,179	1,472,740
AGRICULTURE EXPERIMENT STATION						
1. Agriculture Experiment Station	5,660,387	2,409,194	8,069,581	5,819,926	2,429,740	8,249,666
2. U.S. Range Station		1,042,323	1,042,323		1,070,984	1,070,984
Total	5,660,387	3,451,517	9,111,904	5,819,926	3,500,724	9,320,650
COOPERATIVE EXTENSION SERVICE						
1. Public Service	2,137,314	1,860,960	3,998,274	2,144,548	1,916,789	4,061,337
FORESTRY & CONSERVATION EXPERIMENT STATION						
1. Research	673,410		673,410	682,421		682,421
MONTANA STATE UNIVERSITY						
1. Instruction	15,041,653	8,349,455	23,391,108	14,616,553	8,862,973	23,479,526
2. Research	363,280	184,046	547,326	361,820	185,916	547,736
3. Public Service	6,530	3,498	10,028	6,589	3,634	10,223
4. Academic Support, Student Services, and Institutional Support	8,287,157	4,545,520	12,832,677	8,341,362	4,716,536	13,057,898
5. Audit	15,542	8,208	23,750	15,468	8,282	23,750

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	Fiscal 1984			Fiscal 1985		
	General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total
6. Operation and Maintenance of Physical Plant	3,078,056	1,733,254	4,811,310	3,142,117	1,952,169	5,094,286
7. Scholarships and Fellowships	530,174	280,019	810,193	583,582	312,490	896,072
Total	27,322,392	15,104,000	42,426,392	27,067,491	16,042,000	43,109,491

Included in item 2 is a $15,000 general fund appropriation for fiscal year 1985 for the Office of Water Policy. If federal funds are not available for matching such funds, they revert to the general fund.

The appropriations in item 5 are for the biennium. Total audit costs are estimated to be $95,000 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent these reimbursements to the current unrestricted fund at Montana State University exceed $1,020,000 each fiscal year of the biennium, the general fund appropriated for that fiscal year is reduced a like amount.

UNIVERSITY OF MONTANA

1. Instruction	11,419,715	6,036,654	17,456,369	10,613,515	6,434,037	17,047,552
2. Research	270,008	143,383	413,391	274,485	146,525	421,010
3. Public Service	124,627	66,271	190,898	126,163	67,542	193,705
4. Academic Support, Student Services, and Institutional Support	6,424,693	3,518,551	9,943,244	6,563,777	3,606,403	10,170,180
5. Audit	14,728	7,772	22,500	14,736	7,764	22,500
6. Operation and Maintenance of Physical Plant	3,013,400	1,670,437	4,683,837	3,221,552	1,899,021	5,120,573
7. Scholarships and Fellowships	474,591	250,432	725,023	513,232	270,418	783,650
Total	21,741,762	11,693,500	33,435,262	21,327,460	12,431,710	33,759,170

The appropriations in item 5 are for the biennium. Total audit costs are estimated to be $90,000 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

Special fees generated for legal education and for pharmacy clinical education shall be excluded from tuition and fee estimates for purposes of calculating general fund support required by each institution.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent these reimbursements to the current unrestricted fund at the University of Montana exceed $467,500 each year of the biennium, the general fund appropriation is reduced a like amount.

EASTERN MONTANA COLLEGE

1. Instruction	4,116,754	2,102,571	6,219,325	4,029,115	2,309,077	6,338,192
2. Public Service	26,505	13,040	39,545	27,021	13,740	40,761
3. Center for Handicapped Children	164,158		164,158	166,620		166,620
4. Academic Support, Student Services, and Institutional Support	2,837,130	1,434,368	4,271,498	2,902,625	1,511,722	4,414,347
5. Audit	12,106	5,894	18,000	12,018	5,982	18,000
6. Operation and Maintenance of Physical Plant	1,138,088	578,779	1,716,867	1,184,784	654,269	1,839,053
7. Scholarships and Fellowships	175,293	85,348	260,641	199,323	99,210	298,533
Total	8,470,034	4,220,000	12,690,034	8,521,506	4,594,000	13,115,506

The appropriations in item 5 are for the biennium. Total audit costs are estimated to be $48,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

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	Fiscal 1984			Fiscal 1985		
	General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent these reimbursements to the current unrestricted fund at Eastern Montana College exceed $85,000 each year of the biennium, the general fund appropriation is reduced a like amount.

NORTHERN MONTANA COLLEGE

1. Instruction	2,635,338	959,865	3,595,203	2,654,554	1,001,640	3,656,194
2. Public Service	7,638	2,677	10,315	7,826	2,624	10,450
3. Academic Support, Student Services, and Institutional Support	1,405,986	507,643	1,913,629	1,736,012	612,138	2,348,150
4. Audit	11,122	3,878	15,000	11,263	3,737	15,000
5. Operation and Maintenance of Physical Plant	614,634	224,632	839,266	645,567	237,113	882,680
6. Scholarships and Fellowships	121,464	42,355	163,819	139,402	46,248	185,650
Total	4,796,182	1,741,050	6,537,232	5,194,624	1,903,500	7,098,124

The appropriations in item 4 are for the biennium. Total audit costs are estimated to be $40,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent these reimbursements to the current unrestricted fund at Northern Montana College exceed $11,050 in fiscal 1984 and $8,500 in fiscal 1985, the general fund appropriation is reduced a like amount.

WESTERN MONTANA COLLEGE

1. Instruction	992,199	457,968	1,450,167	966,447	496,254	1,462,701
2. Academic Support, Student Services, and Institutional Support	943,225	424,819	1,368,044	952,655	431,616	1,384,271
3. Audit	10,440	4,560	15,000	10,410	4,590	15,000
4. Operation and Maintenance of Physical Plant	414,586	191,068	605,654	421,977	210,861	632,838
5. Scholarships and Fellowships	37,688	16,460	54,148	42,086	18,554	60,640
Total	2,398,138	1,094,875	3,493,013	2,393,575	1,161,875	3,555,450

The appropriations in item 3 are for the biennium. Total audit costs are estimated to be $40,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 5.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent these reimbursements to the current unrestricted fund at Western Montana College exceed $14,875 in each year of the biennium, the general fund appropriation is reduced a like amount.

MONTANA COLLEGE OF MINERAL SCIENCE & TECHNOLOGY

1. Instruction	2,920,475	1,550,985	4,471,460	3,101,040	1,848,719	4,949,759
2. Research	26,266	13,438	39,704	25,653	13,760	39,413
3. Academic Support, Student Services, and Institutional Support	1,993,079	1,048,548	3,041,627	2,212,263	1,217,688	3,429,951
4. Audit	11,206	5,669	16,875	11,070	5,805	16,875
5. Operation and Maintenance of Physical Plant	713,819	376,067	1,089,886	711,848	412,316	1,124,164
6. Scholarships and Fellowships	176,990	89,543	266,533	215,425	112,962	328,387
Total	5,841,835	3,084,250	8,926,085	6,277,299	3,611,250	9,888,549

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	Fiscal 1984			Fiscal 1985		
General Fund	Current Unrestricted	Total	General Fund	Current Unrestricted	Total

The appropriations in item 4 are for the biennium. Total audit costs are estimated to be $45,000 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

Eighty-five percent of all indirect cost reimbursements shall be deposited in the current unrestricted fund. To the extent these reimbursements to the current unrestricted fund at Montana College of Mineral Science and Technology exceed $106,250 in each year of the biennium, the general fund appropriation is reduced a like amount.

	Fiscal 1984				Fiscal 1985				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Total
TOTAL SECTION F									
86,787,196	44,018,090	1,280,019		132,085,305	87,019,701	47,512,832	1,557,899		136,090,432
TOTAL ALL SECTIONS									
332,757,371	226,188,243	356,275,853	42,035,740	957,257,207	327,432,302	242,699,445	356,945,792	43,331,060	970,408,59

NOTE: The total of state special revenues for section F and all sections includes $42,303,152 in fiscal 1984 and $45,218,027 in fiscal 1985 of current unrestricted funds.

Section 1. **Effective date.** This act is effective July 1, 1983.

Approved May 16, 1983.

HOUSE BILL NO. 510

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR SPECIAL COMMODITY DISTRIBUTION.

WHEREAS, the distribution of special commodity cheese and butter in the State of Montana has resulted in low-income families and families of unemployed persons receiving 709,560 pounds of these nutritional goods, valued at $1,043,053.20; and

WHEREAS, the transportation, storage, and coordination of commodity distributions represent costs that are significant to the state and to local distribution organizations, although these costs are small in comparison to the value of commodities distributed; and

WHEREAS, the value of continuing and supporting special commodity distributions is underscored by Montana's present economic and unemployment situation and the resultant participation of Montanans in the program; and

WHEREAS, it has been indicated that additional special commodity foods will be available in the near future.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated to the Department of Social and Rehabilitation Services $150,000 from federal funds made available specifically for special commodity distribution for each of the fiscal years ending June 30, 1984, and June 30, 1985, for special commodity

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distribution. This appropriation must be allocated by the Department of Social and Rehabilitation Services to its contractors, including Human Resource Development Councils, that distribute special commodities. The funds allocation shall be based upon the amounts of such commodities distributed by each contractor.

Approved April 27, 1983.

HOUSE BILL NO. 526

AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF REVENUE FOR THE PAYMENT OF A JUDGMENT AGAINST THE DEPARTMENT; PROVIDING THAT THE APPROPRIATION IS NONJUDGMENTAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) There is appropriated $66,078.69, or so much thereof as may be necessary, from the general fund to the Department of Revenue to satisfy the judgment of the District Court in the case of The Conrad National Bank of Kalispell v. The Department of Revenue, Civil Cause No. 29,099, County of Flathead.

(2) The appropriation provided in subsection (1) is an amount to pay the judgment of $53,764.41 and interest thereon at a rate of 10%, as ordered by the court, calculated to June 30, 1983. If the judgment is paid by the Department of Revenue prior to that date, excess portions of the appropriation shall revert to the general fund.

Section 2. **Appropriation nonjudgmental.** By appropriating the above sums, the Legislature is not passing judgment on the merits of the case for which the appropriation is made.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 26, 1983.

HOUSE BILL NO. 597

AN ACT TO APPROPRIATE UP TO $48,000 TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE PURPOSE OF ADMINISTERING A GRANT TO THE CITY OF GLASGOW AND VALLEY COUNTY JOINTLY FOR A CITY-COUNTY WATER PROJECT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated up to $48,000 from the resource indemnity trust interest account provided for in 15-38-201 to the Department of Natural Resources and Conservation, after any allocations made under House Bill 447, House Bill 876, and House Bill 745, for

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the purpose of administering a grant to the City of Glasgow and Valley County jointly for the purpose of completing the feasibility study of the city-county water project and completing a loan application to the United States Bureau of Reclamation to finance the project.

Approved April 27, 1983.

HOUSE BILL NO. 692

AN ACT TO APPROPRIATE $45,000 FOR ADMINISTRATION AND OPERATION OF THE FLATHEAD BASIN COMMISSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund to the Governor's office, for the biennium ending June 30, 1985, $45,000 for the administration and operation of the Flathead Basin Commission established in Senate Bill 161.

Approved April 25, 1983.

HOUSE BILL NO. 745

AN ACT TO APPROPRIATE UP TO $100,000 TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADMINISTER A GRANT TO THE MILK RIVER IRRIGATION DISTRICTS AND LIBERTY COUNTY FOR THE PURPOSE OF APPLYING TO THE FEDERAL ENERGY REGULATORY COMMISSION FOR A HYDROELECTRIC PLANT ON THE TIBER DAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation for application for Tiber Dam hydroelectric project.** There is appropriated up to $100,000 from the remainder of the resource indemnity trust account provided for in 15-38-201 to the Department of Natural Resources and Conservation, after any allocation made pursuant to House Bill 447 and House Bill 876, for the purpose of administering a grant to the Milk River Irrigation Districts and Liberty County to prepare an application to the Federal Energy Regulatory Commission for a hydroelectric power plant on the Tiber Dam. Any funds available under this section shall be distributed between the Milk River Irrigation Districts and Liberty County on an equal basis.

Approved April 29, 1983.

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HOUSE BILL NO. 819

AN ACT TO APPROPRIATE FUNDS TO THE MONTANA BUREAU OF MINES AND GEOLOGY FROM THE RENEWABLE RESOURCES DEVELOPMENT ACCOUNT FOR MONITORING AND ASSESSING IMPACTS ON GROUND WATER IN SENSITIVE AREAS AND FOR IMPLEMENTING A GROUND WATER INFORMATION SYSTEM.

WHEREAS, 60% of the State's population depends on ground water for domestic, stock, and irrigation supplies; and

WHEREAS, coal and hard-rock mining have caused significant impacts on ground water resources; and

WHEREAS, there is a continuing concern regarding these impacts on water supplies and the public welfare; and

WHEREAS, there is a need for a system to collect, store, and disseminate ground water information.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $60,000 from the renewable resources development account to the Montana Bureau of Mines and Geology for the biennium ending June 30, 1985.

Section 2. **Expenditure of funds.** The funds appropriated by section 1 must be expended for the following purposes:

(1) to develop and maintain a water quality data base and information distribution system as part of a systematic ground water impact mitigation effort;

(2) to maintain a network of strategically placed ground water monitoring wells in areas subject to water quality or quantity impacts;

(3) to provide regional assessments of shallow to intermediate depth ground water conditions to minimize deleterious mixing of surface and subsurface fluids in local ground water systems during and subsequent to exploratory drilling;

(4) to provide technical services relating to mine reclamation plans, with special emphasis on predicting and mitigating ground water impacts such as water quality degradation from ground water/surface water mixing, unanticipated ground water discharges, and surface flooding related to ground water rebound; and

(5) to monitor induced seismic activity related to major ground water rebound or large water impoundments in mining areas near active or potentially active fault zones.

Section 3. **Priority.** The Bureau of Mines and Geology shall place priority for monitoring efforts during the biennium on the flooding impacts

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at the Berkeley Pit in Silver Bow County and the coal mining areas of southeastern Montana.

Section 4. **Use of existing data.** Data from private company monitoring programs may not be duplicated by the program authorized in this act. Data from private companies must be entered into the statewide ground water information system and only supplemented as needed.

Section 5. **Cooperation.** The Bureau of Mines and Geology may enter into cooperative agreements with pertinent state regulatory agencies to establish locations and objectives of monitoring and means of access to the information system. Data must be made available to the public, industry, and state and federal agencies upon request.

Approved April 26, 1983.

HOUSE BILL NO. 833

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1985; TO PROVIDE FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) "Approved budget amendment" means approval by the budget director of a request submitted through the Architecture and Engineering Division of the Department of Administration to transfer excess funds appropriated to a capital project within an agency in order to increase the appropriations of another capital project within that agency or to obtain financing to expand a project with funds which were not available for consideration by the Legislature.

(3) "BPICA" means the bond proceeds and insurance clearance account.

(4) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

(5) "Other appropriated funds" means money, other than general fund, university auxiliary funds, university plant funds generated from auxiliary fund operations, other lawful purpose funds from bond indentures, student fees, or BPICA money, that accrues under the provisions of law to an agency indicated in this act.

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Section 2. **Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved by the 48th Legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 4. **Reappropriation.** (1) Except as provided in subsection (2) and notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are reappropriated until June 30, 1985, for the purposes for which originally appropriated.

(2) The bond proceeds and insurance clearance fund appropriation authorized by the 47th Legislature for the acquisition and development of a cemetery at the old Fort Custer site in Big Horn County is reappropriated for road improvements at the Canyon Ferry State Recreation Area.

Section 5. **Capital projects appropriations.** The following money is appropriated from the indicated accounts to the Department of Administration:

Agency/Program	BPICA	Other Appropriated Funds
Department of Administration		
Energy Conservation Retrofit	$1,000,000	$
Original Governor's Mansion Improvements	70,500	
Land Acquisition & Grounds Improvements	161,000	
Building Modifications, 820 Front Street, Helena	120,000	
Miscellaneous Building Improvements, Helena	400,000	
Storm Drainage Detention Basin, Capitol Complex	250,000	
Department of Commerce		
Runway Improvements, Lincoln Airport		150,000
Department of Fish, Wildlife, and Parks		
Fishing Access Site Development		250,000
Headquarters Renovation & Repair		25,000
Headquarters Storage Building, Region I		30,000
Wildlife Management Area Maintenance		50,000
Lake & Stream Improvements		50,000
Elkhorn State Monument Improvements		20,000

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Agency/Program	BPICA	Other Appropriated Funds
Giant Springs Heritage State Park Improvements	75,000	
Makoshika State Park Development		78,000
Spring Meadow Lake Improvements		120,000
Madison Buffalo Jump State Monument Improvements		5,000
Bannack State Park Improvements	158,000	210,000
Logan State Recreation Area Improvements		80,000
Yellow Bay State Recreation Area Improvements		8,000
Pictograph Cave State Monument Improvements		40,000
Plenty Coups State Monument Improvements		38,000
Canyon Ferry State Recreation Area Road Improvements	50,000	
Department of Health & Environmental Sciences		
Chemistry Lab Renovation	119,000	
Department of Highways		
Miscellaneous Maintenance, Highway Facilities		750,000
Maintenance Garage, Lost Trail		63,500
Construct Sand House, Diamond Ring Interchange		44,275
Department of Institutions		
Roof Replacement & Major Maintenance	1,092,106	
Fire Sprinklers & Detection System, Warm Springs & Boulder	156,830	
Construct Porte-Cochere, Center for the Aged	5,620	
Remodel Infirmary, Prison	200,000	
Purchase Infirmary, Prison	100,000	
Industries Building, Prison	700,000	
Remodel Alpha House	15,000	
Youth Treatment Center Furniture	10,820	
Mountain View Fire Alarm System	15,000	
Swan River Youth Camp Sewage Study	7,111	
Forensic Building Improvements & Addition, Warm Springs	1,678,464	
Department of Military Affairs		
Mechanical Maintenance, Three Armories	13,000	

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Agency/Program	BPICA	Other Appropriated Funds
Repair & Replace Roofs	135,000	39,000
Street Improvements, Anaconda Armory	19,000	
Replace Exhaust System	4,000	39,000
Energy Retrofit	5,000	106,000
Construct Emergency Operations Center, Helena Armory	913,356	804,688
Department of State Lands		
Paint Shop Modification, Missoula Forestry Complex	55,000	
Capital Improvements	40,000	
University System		
Engineering Laboratory/Classroom Building, Tech		1,250,000
PE Building Roof Repair, EMC		55,000
Men's Gym Roof Repair, UM		51,000
Linfield Hall Auditorium Repair, MSU		150,000
Plan Business Administration Facility, UM		50,000
Plan Engineering/Physical Sciences Complex, MSU		350,000
Complete Library Basement, MSU		300,000
Pave Hadleigh Marsh Lab & Agriculture Complex, MSU		286,300
Remodel Herrick Hall, MSU		300,000
Construct Machine Shop & Storage Complex, Ag Experiment Station		302,000
Electrical Distribution System, UM	237,120	246,880
Roof Replacement & Major Maintenance	1,443,700	
Relocate Business Machine Laboratory, UM	20,000	
Vehicle Storage & Maintenance Facility, WMC	230,000	
Expand Museum of the Rockies, MSU		6,000,000

Appropriations shown in the other appropriated funds column for the PE Building roof repair at EMC, the Men's Gym roof repair at UM, and the Electrical Distribution System at UM may utilize university auxiliary or plant funds.

Section 6. **Land acquisition appropriation.** The following money is appropriated in the indicated amounts for purposes of land acquisition to the Department of Fish, Wildlife, and Parks:

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Agency/Program	BPICA	Other Appropriated Funds
Coal Tax Park Acquisitions		
Lake Elmo, Billings		1,000,000
Glen Lake, Bozeman		420,000
Les Mason Memorial, Whitefish Lake		675,000
Parker Homestead, Three Forks		12,500
State Park System In-holdings		88,000
Blackfoot River Easement		50,000
Pageville School, Twin Bridges		20,000
Clark Rock, Dillon		40,739
Fishing Access Site Acquisition		745,000
Game Range Acquisition		300,000
Fort Owens Renovation	$20,000	

Section 7. **Appropriation for Mansfield Center for Pacific Affairs.** There is appropriated $1 million from the BPICA to the Department of Commerce to assist in the erection of a memorial in honor of one of Montana's great citizens, Mike Mansfield. The department shall enter into an agreement with the Maureen and Mike Mansfield Foundation pursuant to which the department shall agree to pay the funds appropriated by this section to the foundation upon the receipt of at least $6 million by the foundation from other sources. The funds appropriated by this section must be used exclusively for the construction of the Mansfield Center for Pacific Affairs at Polson, Montana. By this appropriation, the 48th Legislature indicates that it has determined that the state's support of the erection of a memorial through the establishment of the Mansfield Center for Pacific Affairs at Polson is a lawful public purpose of statewide importance in that it will serve to inspire sentiments of respect for a man of great stature and importance to the state, will generate important economic development of the state by direct employment, attraction of visitors, and establishment of expanded trade opportunities.

Section 8. **Building demolition.** The Department of Administration may solicit bids for demolition or sale and removal of the following buildings:

Boulder River School & Hospital

1. Cottage #5
2. Building #103 [Trailer]
3. Buildings #57 through #66 [Log Cabins]
4. Building #100 [Old Administration Building]
5. Selected Ranch Buildings

Warm Springs/Galen

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1. Building #13 [Old General Hospital]
2. Two Employee residences [Residence L and Residence R]
3. Building #18 [Children's Unit]
4. Building #85/86 [Medium Security Forensic Unit]

Pine Hills School

1. Lewis portion of Lewis & Clark Lodge

Montana Veterans' Home

1. Old Main/Men's Dorm

The director of the Department of Institutions must certify to the Department of Administration that each of the above buildings is surplus to the needs of the department and the state by reason of the building's age, deteriorated physical condition, life/safety, or licensure deficiencies and has no residual economic or useful life. If the cost of the deficiencies would preclude reasonable restoration and refurbishing efforts, the director of the Department of Administration may grant an order to proceed with demolition on condition that:

(a) a successful contractor or bidder agrees to demolish or remove the building and reclaim the building site based on the salvage value of the building itself; and

(b) the demolition or removal of the building does not violate the provisions of the State Antiquities Act relative to established heritage properties under state ownership.

Section 9. **Special session reauthorization.** The appropriations for capital projects authorized in section 6, House Bill 5, enacted by the 47th Legislature, second special session, are reappropriated through the biennium ending June 30, 1985. The Department of Administration may exempt these projects from any provisions of Montana law relating to the employment of architects, public bidding, bonding, or labor and wage requirements.

Section 10. **Planning and design.** The Department of Administration may proceed with the planning and design of capital projects prior to the sale of bonds or the receipt of other appropriated funds. The Department may utilize interaccount loans in accordance with 17-2-107 to pay such planning and design costs incurred prior to the receipt of bond proceeds or other appropriated funds.

Section 11. **Capital projects — contingent funds.** If any capital project is financed in whole or in part with appropriations contingent upon the receipt of other appropriated funds, the Department of Administration may not let such projects for bid until the agency has submitted a financial plan for approval by the director of the Department of Administration. No such financial plan may be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding levels provided in this act for that project; or

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(2) the scope of the project must be substantially altered or revised from the preliminary plans presented for that project in the 1983-85 Long-range Building Program presented to the 48th Legislature.

Section 12. **Legislative consent.** The appropriations authorized in this act must be considered as legislative consent for the capital projects contained in this act within the meaning of 18-2-102.

Section 13. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1983.

HOUSE BILL NO. 876

AN ACT TO APPROPRIATE MONEY FROM THE RESOURCE INDEMNITY TRUST ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR USE BY THE SHERIDAN COUNTY CONSERVATION DISTRICT FOR AN EVALUATION, QUANTIFICATION, AND MAPPING OF THE GROUND WATER RESOURCES IN THE ANCESTRAL MISSOURI RIVER CHANNEL AND ADJACENT AREAS IN SHERIDAN, ROOSEVELT, DANIELS, VALLEY, MCCONE, AND RICHLAND COUNTIES.

WHEREAS, northeastern Montana has been undergoing extensive oil and gas development, rapid installation of irrigation systems, and planning for coal and potash development, and serious concerns relating to the ground water resources of the region have been expressed by the citizens of northeastern Montana; and

WHEREAS, water quantity, quality, and availability for the entire area need to be evaluated before further development occurs to determine optimum utilization of ground water for agriculture, industry, domestic, and municipal uses and minimize undesirable social, economic, and environmental impacts; and

WHEREAS, preliminary investigations begun in 1982 indicate that there are potentially large quantities of ground water in the ancestral Missouri River channel and adjacent areas in Sheridan, Roosevelt, Daniels, Valley, McCone, and Richland Counties that may provide the opportunity to increase productivity and provide new sources of potable water for municipal and rural areas, as well as stability for the agricultural industry of this semiarid region of the state; and

WHEREAS, the State of North Dakota and the Province of Saskatchewan are continuing to develop ground water resources adjacent to this region; and

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WHEREAS, cooperation and support for an investigation have been pledged from many sources, including Sheridan, Daniels, Roosevelt, Valley, McCone, and Richland County conservation districts, the Northeastern Montana Land and Mineral Association, the Three Corners Boundary Association, the Montana Association of Conservation Districts, the Montana Bureau of Mines and Geology, the Department of Natural Resources and Conservation, the Oil and Gas Conservation Board, the United States Geological Survey, the United States Fish and Wildlife Service, the Bureau of Indian Affairs, and the Environmental Protection Agency.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated up to $150,000 from the remainder of the resource indemnity trust interest account created in 15-38-201 to the Department of Natural Resources and Conservation, after any allocations made under House Bill 447, to administer a grant to the Sheridan County Conservation District for the biennium ending June 30, 1985, to complete the evaluation, quantification, and mapping of the ground water resources of the ancestral Missouri River channel and adjacent areas in Sheridan, Roosevelt, Daniels, Valley, McCone, and Richland Counties.

Section 2. **Report.** The Sheridan County Conservation District shall administer these funds in cooperation with the counties named in section 1 and provide maps and a report describing the quantity and quality of ground water resources available in the region for use by area planners, local organizations, state and federal agencies, and citizens of northeastern Montana.

Section 3. **Use of report and data.** The Sheridan County Conservation District and the conservation districts of the counties named in section 1 shall utilize the report and data in administering ground water rights reserved by the districts in cooperation with the Department of Natural Resources and Conservation as specified under Chapter 697, Laws of 1979.

Approved April 27, 1983.

HOUSE BILL NO. 892

AN ACT TO APPROPRIATE SUPPLEMENTAL FUNDS TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR THE BIENNIUM ENDING JUNE 30, 1983, TO PROVIDE FOR BACKPAYMENTS RESULTING FROM RECLASSIFICATION OF GAME WARDENS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated as supplemental funding $478,000 to the Enforcement Division of the Department of Fish, Wildlife, and Parks for the biennium ending June 30, 1983, from the earmarked revenue fund account of the Department of Fish, Wildlife, and

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Parks to provide for backpayments resulting from reclassification of game wardens during the current biennium.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

HOUSE BILL NO. 896

AN ACT TO APPROPRIATE $350,665 TO THE DEPARTMENT OF INSTITUTIONS TO COMPLETE CONSTRUCTION OF THE CHILDREN'S TREATMENT UNIT IN BILLINGS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated for fiscal years 1983 and 1984 the total amount of $350,665 from the bond proceeds and insurance clearance fund to the Department of Institutions to complete construction of the Children's Treatment Unit in Billings.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved March 24, 1983.

HOUSE BILL NO. 897

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS AND GRANTS UNDER THE WATER DEVELOPMENT PROGRAM, FOR GRANTS UNDER THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM, AND FOR LOANS UNDER THE RANGELAND IMPROVEMENT LOAN PROGRAM; TO APPROVE LOANS FROM WATER DEVELOPMENT BOND PROCEEDS AND TO COMPLETE AN APPROPRIATION FOR DEBT SERVICE; TO REALLOCATE CERTAIN RESOURCE INDEMNITY TRUST ACCOUNT INTEREST INCOME AND RENEWABLE RESOURCE DEVELOPMENT ACCOUNT FUNDS FOR WATER DEVELOPMENT PROGRAM LOANS AND GRANTS DURING THE BIENNIUM ENDING JUNE 30, 1985; TO PLACE CERTAIN CONDITIONS UPON GRANTS AND LOANS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations from the water development earmarked account.** (1) There is appropriated to the Department of Natural Resources and Conservation up to $296,700 from the water

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development earmarked account during the biennium ending June 30, 1985, for grants to private persons for water development projects and activities pursuant to the provisions of Title 85, chapter 1, part 6. This appropriation is from money available in the water development earmarked account for loans and grants for water development projects and activities under 85-1-604(3)(c) and sections 5 through 7 of this act.

(2) There is appropriated to the Department of Natural Resources and Conservation all other funds not appropriated under subsection (1) and available for grants to state and local government entities from the water development earmarked account during the biennium ending June 30, 1985. This appropriation is from money available in the water development earmarked account for loans and grants for water development projects and activities under 85-1-604(3)(c) and sections 5 through 7 of this act. The funds appropriated in this subsection shall be awarded by the Department of Natural Resources and Conservation to the following entities for the described purposes and in the described grant amounts. The Legislature, pursuant to 85-1-605, approves the grants listed below with grants to be made in the order of priority as indicated within the following prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or utilized by higher ranked projects and activities must be provided for projects and activities farther down the priority list that would not otherwise receive funding. If the total expenditure of funds appropriated under this subsection results in a cutoff that ends at a point at which more than one project or activity is ranked equal in priority, the decision regarding which project or projects will receive funding must be made by the Department of Natural Resources and Conservation with the advice of the water development advisory committee formed pursuant to 2-15-122. Actual rank and score of the various projects and activities are contained within the Department's water development program status report for the 1982-83 biennium. Sponsors of recommended projects and activities on the prioritized list that are not recipients of available grant funds must be offered the opportunity to receive loan funds for up to the total recommended project or activity amount pursuant to sections 4 and 8 of this act.

Water Development Program Prioritized Projects and Activities
for Governmental Entities
G: Grant L: Loan

Whitefish Basin		
Water and Sewer District;		
Land Use Master Plan	G	$ 100,000
Jefferson County CD;		
Pipestone Creek Erosion Control	G	100,000
Triangle Conservation District;		
Saline Seep Control Project	G	100,000
Geraldine Rural Water System	G	100,000
	L	100,000
City of Bozeman;	G	87,000
Mystic Lake Dam Repair	L	100,000

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City of Helena;	G	24,000
Chessman Reservoir Stability Analysis	L	11,000
DFWP; South Sandstone Dam Repair	G	100,000
DFWP; Bitterroot Flow Augmentation	G	40,000
Sheridan County CD;		
Ground Water Assessment in N.E. Montana	G	100,000
Chouteau County CD;		
Saline Seep Assessment (Geraldine Area)	G	52,000
Ingomar Water System	G	22,000
	L	43,000
DFWP; Gartside Dam Repair	G	100,000
U of M;		
Flathead Valley Ground Water Study	G	100,000
City of Laurel; Ditch Lining	G	100,000
Culbertson; Water System	G	100,000
Rehabilitation	L	100,000
Rosebud County CD; Irrigation Management	G	16,000
Cascade-Teton County CDs;		
Muddy Creek Project	G	100,000
South Kremlin & Gildford	G	88,000
Rural Water System	L	100,000
Greenfield Irrigation District;	G	87,000
Headgate Automation	L	100,000
Box Elder Rural		
Water System (Carter County)	G	100,000
Rosebud County CD;		
Streambank Stabilization	G	5,500
Sheridan County; for Antelope	G	100,000
Water and Sewer System	L	100,000
DFWP; Streambank Stabilization Program	G	50,000
DNRC; Riparian Protection Program	G	39,000
Ekalaka; Water Master Plan	G	17,000
	L	6,000
DHES; Water Treatment Plant Analysis	G	16,000
Flaxville; Water Source Development	G	6,000
	L	44,000
Dutton; Water Source Feasibility Study	G	41,900
City of Whitefish;	G	35,000
Master Water Plan	L	12,000
DNRC; Completion Yellowstone Offstream		
Hydropower Study	G	100,000
Water Resources Oversight Committee	G	15,000
Hamilton; Water System	G	82,000
Rehabilitation	L	100,000
Huntley Irrigation Project;	G	18,000
Irrigation Rehabilitation	L	100,000
Roosevelt County Rural Water System	G	100,000
	L	100,000
Wolf Point; Water	G	100,000
System Improvements	L	100,000
Judith Gap;	G	6,000

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Water Storage Tank	L	94,000
Helena; Red Mountain	G	36,000
Trestle Repair	L	24,000
Winnett, Water System Repair	G	37,000
	L	100,000
DNRC; Gravity Irrigation Development	G	41,000
Seeley Lake; Water	G	9,000
and Sewer Master Plan	L	3,000
Virginia City; Sewer		
and Water Extension	L	45,000
McCone County CD; Feasibility Study	G	50,000
Troy; Master Water Plan	G	16,000
	L	6,000
Hot Springs; Water	G	7,000
Master Plan	L	3,000
Columbus; Itch-Kep-Pe Park	G	44,000
Rehabilitation	L	36,000
Cascade; Landfill Rehabilitation	G	41,000
and Park Development	L	59,000
Montana Agricultural Experiment		
Station; Riparian Grazing Study	G	31,811
City of Polson;	G	79,000
Drainage Project	L	100,000
Montana State Prison Ranch;		
Irrigation and Fertilizer Project	G	40,000
Hardin; Flood Mitigation Plan	G	22,000
East Bench Irrigation District;		
Streambank Erosion Control	G	30,000
Montana State Prison Ranch;		
Parshall Flume	G	10,000
Fort Benton; Water	G	1,000
Storage Tank Repair	L	16,200
DFWP; Yellow Bay Recreation Area	G	8,000
Plains; Water Source	G	8,000
Development	L	92,000
DFWP; Deadman's Basin Recreation Area	G	45,000
DFWP; Logan Recreation Area	G	80,000
DFWP; Canyon Ferry Recreation Area	G	70,000

Section 2. **Appropriations under the renewable resource development program.** (1) There is appropriated to the Department of Natural Resources and Conservation all available funds after the allocation made by sections 5 through 7 of this act, from the renewable resource development program clearance fund account during the biennium ending July 30, 1985, for projects under the renewable resource development program.

(2) The Department of Natural Resources and Conservation shall award grants to the following entities for the described purposes and in the described amounts. The Legislature, pursuant to 90-2-111, approves the grants listed below with grants to be made in order of priority ranking within each renewable resource development category, excluding projects

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funded under the water development program pursuant to section 1 of this act. The funds appropriated under this section shall be divided among the categories and in the percentages as required by 90-2-113, as amended by HB 486 if HB 486 is passed by the 48th Legislature and approved by the Governor. Funds not accepted or utilized by higher ranked projects in each category must be provided for projects, further down the priority list in each category, that would not otherwise receive funding. If the total expenditure of funds appropriated under this section results in a cutoff that ends at a point at which more than one project is ranked equal in priority, the decision regarding which project or projects will receive funding will be made by the Department of Natural Resources and Conservation with the advice of the water development advisory committee formed pursuant to 2-15-122. Actual rank and score of the various projects are contained within the Department's renewable resource development program, 1982 project evaluation and recommendations report. Sponsors of recommended projects and activities on the prioritized list that are not recipients of available grant funds must be offered the opportunity to receive loan funds for up to the total recommended project or activity amount pursuant to sections 4 and 8 of this act. The interest rate applicable to these loans shall be the rate paid on bonds issued pursuant to this act.

Renewable Resource Development Program
Prioritized Projects by Category for Funding
G: Grant

I. WATER DEVELOPMENT PROJECTS

University of Montana; Flathead County Ground Water Study	G	$ 100,000
Whitefish Basin Water & Sewer District; Land Use Master Plan	G	100,000
Chouteau County Conservation District; Saline Seep Assessment	G	52,000
DHES; Water Treatment Plant Analysis	G	16,000
Montana Agricultural Experiment Station; Riparian Grazing Study	G	31,811
City of Laurel; Ditch Lining	G	100,000
Jefferson County Conservation District; Pipestone Creek Erosion Control	G	100,000
Rosebud CD; Streambank Stabilization	G	5,500
DFWP; Bitterroot Flow Augmentation	G	40,000
Triangle Conservation District; Triangle Area Saline Seep Project	G	100,000
DFWP; Gartside Dam Repair	G	100,000
Ekalaka; Water Master Plan	G	13,000
City of Helena; Chessman Reservoir Stability Analysis	G	24,000
DFWP; South Sandstone Dam Repair	G	100,000
Montana State Prison Ranch; Irrigation & Fertilization Project	G	39,995
Flaxville; Water Source Development	G	6,000
Montana State Prison Ranch; Parshall Flume	G	10,000

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Greenfield Irrigation District; Automation of Headgate	G	87,000
DNRC; Riparian Protection Program	G	39,000
Ingomar; Water System	G	22,000
Sheridan County for Antelope; Water and Sewer System	G	100,000
Columbus; Itch-Kep-Pe Park Rehabilitation	G	44,000
City of Bozeman; Mystic Lake Dam Repair	G	87,000
Hamilton; Water System Rehabilitation	G	82,000
Judith Gap; Water Storage Tank	G	6,000
Wolf Point; Water System Improvement	G	100,000
Geraldine Rural Water System	G	100,000
City of Whitefish; Master Water Plan	G	35,000
Cascade; Landfill Rehabilitation and Park Development	G	41,000
Seeley Lake; Water & Sewer Master Plan	G	9,000
Culbertson; Water System Rehabilitation	G	100,000
DFWP; Streambank Stabilization Program	G	50,000
DFWP; Canyon Ferry State Recreation Area	G	70,000
Sheridan County CD; Ground Water Assessment in N.E. Montana	G	100,000
DFWP; Logan State Recreation Area	G	80,000
Hardin; Flood Mitigation Plan	G	22,000
DFWP; Yellow Bay State Recreation Area	G	8,000
Dutton; Water Source Feasibility Study	G	41,900
DNRC; Gravity Irrigation Development	G	41,000
DFWP; Deadman's Basin Recreation Area	G	45,000
Roosevelt County Rural Water System	G	100,000
City of Polson; Drainage Project	G	79,000
Helena; Red Mountain Trestle Repair	G	36,000
Box Elder Rural Water System (Carter County)	G	100,000
Hot Springs; Water Master Plan	G	7,000
Cascade-Teton CD; Muddy Creek Project	G	100,000
East Bench Irrigation District; Streambank Preservation	G	30,000
Huntley Irrigation Project; Rehabilitation	G	18,000
Troy; Master Water Plan	G	16,000
Winnett; Water System Repair	G	37,000
South K & G Rural Water System	G	88,000
Rosebud CD; Irrigation Management Project	G	16,000
Plains; Water Source Development	G	8,000
Fort Benton; Water Storage Tank Repair	G	1,000
McCone County CD; Feasibility Study	G	50,000

II. TIMBER STAND IMPROVEMENT

Dept. of State Lands; Timber Stand Improvement	G	100,000
U of M; Lubrecht Second Growth		

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Forest Improvement	G	100,000
Seed Tree Orchard Development; Salish/Kootenai Tribes	G	40,000
III. IMPROVEMENTS ON AGRICULTURAL LAND		
Montana Agricultural Experiment Station; Biological Weed Control	G	50,000
DFWP; Mt. Haggin Ranch Cross-Fencing	G	65,000
DNRC; Rangeland Resource Loan Program (Disbursed only if HB 486 does not pass)	G	200,000
Teton County Weed District; Leafy Spurge Control	G	30,000
Valley County CD; Leafy Spurge Control	G	20,000
IV. CONSERVATION DISTRICTS, FOR DEVELOPMENT OF THEIR WATER RESERVATIONS		
DNRC; Water Reservation Development	G	76,000
Lower Yellowstone CD; Water Reservation Development	G	79,000
Sweet Grass CD; Water Reservation Development	G	4,630
V. OTHER		
MSU; Economic Feasibility of Farm-Based Wind Generation	G	20,200
Lewis & Clark County; Land Transfer Program	G	22,554
Cascade County; Cross-Country Ski Trail Improvements	G	10,000

(3) (a) After the allocations provided for in sections 5 through 7 of this act have been made, there is allocated to the rangeland improvement loan earmarked account created by HB 486, 15% of the funds available in the renewable resource development program during the biennium ending June 30, 1985. The funds allocated by this subsection (3)(a) are appropriated from the rangeland improvement loan earmarked account for the rangeland improvement program created by HB 486.

(b) If HB 486 is not passed by the 48th Legislature and approved by the Governor, subsection (3)(a) is void.

Section 3. **Coordination of fund sources for water development projects.** A sponsor of a water development project who has applied for a grant under both the water development program and the renewable resource development program must be funded at recommended amounts under the water development program pursuant to section 1 of this act if sufficient funds are available as determined by the priority ranking of the project or activity. If sufficient grant funds are not available under the water development program, the project must be considered for grant funding under the renewable resource development program pursuant to section 2 of this act, and such award of funds under section 2 is

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dependent upon available funds and the priority ranking of the project under the renewable resource development program.

Section 4. **Approval of loans from bond proceeds and completion of appropriation.** (1) The Legislature, pursuant to 85-1-605, hereby approves the loans identified and described in section 1 of this act for projects and activities to public entities from water development bond proceeds deposited in the water development clearance account.

(2) The approval of specific loans completes an appropriation of the coal severance tax proceeds allocated by 15-35-108 to the water development sinking account for the purpose of paying, in the manner established by 85-1-619, principal of and interest and redemption premiums on any water development bonds issued to provide the proceeds for the loans to public entities approved in subsection (1).

Section 5. **Reallocation of resource indemnity trust account interest income.** Except for special departmental appropriation within HB 447 and notwithstanding any provisions of 85-1-604 to the contrary, all remaining interest income allocated to the water development earmarked account from the resource indemnity trust fund by 15-38-202(2) during the biennium ending June 30, 1985, may be used for and only for the purposes set out in 85-1-604(3)(c).

Section 6. **Reallocation of renewable resource development account funds.** (1) Notwithstanding any provisions of 90-2-103, 90-2-113, and Title 90, chapter 2, part 1, to the contrary, up to $520,000 is allocated during the biennium ending June 30, 1985, from the renewable resource development clearance fund account to the water development earmarked account to be used for and only for the purposes set out in 85-1-604(3)(c).

(2) The reallocation in subsection (1) does not include money previously appropriated for the biennium ending June 30, 1983, to the Department of Natural Resources and Conservation by HB 709, Laws of 1981, for small project water development construction loans to private individuals and which without section 7 of this act would revert to the renewable resource development clearance fund account.

Section 7. **Reallocation of renewable resource development account funds formerly appropriated for water development projects.** (1) Notwithstanding any provisions of 90-2-103, 90-2-113, and Title 90, chapter 2, part 1, to the contrary, up to $251,600 is allocated during the biennium ending June 30, 1985, from the renewable resource development clearance fund account to the water development earmarked account to be used for and only for the purposes set out in 85-1-604(3)(c).

(2) The funds allocated by subsection (1) are to be those funds which were appropriated for the biennium ending June 30, 1983, to the Department of Natural Resources and Conservation by HB 709, Laws of 1981, for small project water development construction loans to private individuals and which funds have reverted to the resource development clearance fund account.

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Section 8. **Conditions of loans and grants.** Disbursement of funds under this act, both loans and grants, may be made only after:

(1) a project or activity receives authorization and residual financing commitments from other sponsors or sources, if necessary;

(2) execution of an agreement or agreements between the Department of Natural Resources and Conservation and the loan or grant applicant that describes the terms and conditions of the project or activity as applied for with the Department of Natural Resources and Conservation or proposed to the Legislature, taking into consideration any changed conditions or circumstances, and that governs the administration and disbursement of funds; and

(3) other specific requirements are accomplished as considered necessary by the Department of Natural Resources and Conservation to accomplish the purpose of the loan or grant as evidenced from the application to the Department of Natural Resources and Conservation or the proposal to the Legislature.

Section 9. **Reversion of funds.** All funds reallocated by sections 5 through 7 of this act to the water development earmarked account that are unspent and unencumbered during the biennium ending June 30, 1985, shall revert to the water development earmarked account.

Section 10. **Treasury fund terminology — coordination.** Any reference in this act to an account or fund that is rendered inaccurate by Ch. 28, L. 1981, or by legislation introduced in the 48th Legislature that is passed and approved to implement Ch. 28, L. 1981, is considered changed in this act to the treasury fund terminology used in the section creating the account or fund.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective date.** This act is effective July 1, 1983.

Approved May 4, 1983.

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HOUSE BILL NO. 898

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR GRANT-IN-AID ASSISTANCE FOR THE FISCAL YEAR ENDING JUNE 30, 1983; TO PROVIDE FOR ANY UNUSED GRANT-IN-AID APPROPRIATION TO BE CARRIED INTO THE 1985 BIENNIUM TO BE USED FOR IN-HOME HEALTH SERVICES AND THE 1985 BIENNIUM SOCIAL AND REHABILITATION SERVICES CONTINGENCY; TO PROVIDE FOR A TRANSFER OF SPENDING AUTHORITY FROM MEDICAID TO AID TO FAMILIES WITH DEPENDENT CHILDREN; TO TRANSFER THE FISCAL 1983 APPROPRIATION FOR THE CHRONIC RENAL DISEASE PROGRAM FROM THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REAPPROPRIATE UNEXPENDED FUNDS FOR THE RENAL PROGRAM FOR EXPENDITURES IN FISCAL 1984; TO PROVIDE SPENDING AUTHORITY FOR THE ELIGIBILITY DETERMINATION PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limit.** The grant-in-aid appropriation, spending authority, and transfer authorization contained in this act are intended to provide only for necessary and ordinary expenditures for fiscal year 1983. Any unspent balance of the general fund appropriation is reappropriated for the 1985 biennium for the following two purposes:

(1) The first $300,000 shall be equally divided between fiscal years for in-home health services as provided for in 53-5-101.

(2) Funds in excess of $300,000 shall be used under the conditions and for the purposes described in the Social and Rehabilitation Services contingency item in [HB 447, 1983].

Section 2. **Appropriation.** There is appropriated $4 million from the general fund to the Department of Social and Rehabilitation Services for the fiscal year ending June 30, 1983, for the purpose of paying grant-in-aid assistance to the counties. Such assistance payments may be made to a county only after the Department determines that related county poor fund expenditures have been reasonable and necessary according to criteria set by the Department in ARM 46.9.301 through 46.9.310. The unexpended portion of $125,000 general fund appropriated for fiscal 1983 in House Bill 2 of Special Session 1 of the 47th Legislature, to the Department of Social and Rehabilitation Services for the Chronic Renal Disease program is transferred to the Department of Health and Environmental Sciences. The unexpended balance of the transferred amount remaining on June 30, 1983, is reappropriated to the Department of Health and Environmental Sciences for the fiscal year ending June 30, 1984.

Section 3. **Transfer of spending authority.** The Department of Social and Rehabilitation Services may transfer spending authority for the

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fiscal year ending June 30, 1983, from the Medicaid program as necessary to cover expenses incident to unanticipated caseload increases in the Aid to Families With Dependent Children program.

Section 4. **Appropriation.** There is appropriated $295,020 from the federal special revenue fund to the Department of Social and Rehabilitation Services for the fiscal year ending June 30, 1983, for the purpose of paying costs resulting from settlement of a lawsuit involving eligibility determination personnel.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved April 25, 1983.

HOUSE BILL NO. 900

AN ACT TO APPROPRIATE BOND PROCEEDS AND OTHER FUNDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1985; TO PROVIDE FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" includes each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) "Approved budget amendment" means approval by the budget director of a request submitted through the Architecture and Engineering Division of the Department of Administration to transfer excess funds appropriated to a capital project within an agency in order to increase the appropriations of another capital project within that agency or to obtain financing to expand a project with funds which were not available for consideration by the Legislature.

(3) "BPICA" means the bond proceeds and insurance clearance account.

(4) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

(5) "Other appropriated funds" means money, other than general fund or BPICA money, that accrues under the provisions of law to an agency indicated in this act.

Section 2. **Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved

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by the 48th Legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 4. **Reappropriation.** Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are reappropriated until June 30, 1985, for the purposes for which originally appropriated.

Section 5. **Appropriation of bond proceeds and other funds.** The following money is appropriated from the BPICA and the other indicated accounts to the Department of Administration for the capital projects described in this section, contingent upon the authorization and sale of general obligation bonds by the 48th Legislature and the Board of Examiners, respectively:

Agency/Program	BPICA	Other Appropriated Funds
Major Expansion, Prison	$14,416,400	

(1) The goal of the legislature in providing for major expansion of the Montana state prison is to provide housing for 737 prisoners within the security compound at the prison while achieving the following objectives:

(a) Inmate housing should be separated into at least three levels of security. The separation should be pursued to the maximum possible extent to prevent communication by personal contact, sight, and sound among the separate areas of the prison. Staff interaction among these security levels should also be minimized to enhance the separation. The legislature regards the separation of maximum security prisoners to be an especially important objective.

(b) Perimeter security should be improved with the objective of minimizing the prisoners' ability to breach the perimeter. The legislature intends that the fence lines should be straight and provided with adequate guard towers and stations to provide full visual coverage of the entire perimeter on both sides of the fence.

(c) Interior security is to be improved by designs allowing supervision and movement of small, manageable groups of inmates without threat to staff.

(d) The expansion should be designed to be compatible with prisoner work and rehabilitation activities to the extent possible.

(e) The expansion should allow space to build housing for an ultimate total population of 1,150 prisoners within the compound without changes in perimeter security facilities or support facilities.

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Agency/Program	BPICA	Other Appropriated Funds

(2) (a) There is a prison expansion oversight committee that consists of four members. The speaker and minority leader of the house shall each appoint one member of the house, and the president and the minority leader of the senate shall each appoint one member of the senate.

(b) The prison expansion oversight committee shall consult regularly with and advise those persons responsible for implementing and planning the major expansion of Montana state prison. The committee shall participate in the preliminary screening and recommendation of an architect to perform design work. The committee shall monitor the development of plans and advise the planners as to whether plans meet the goals and objectives of the legislature outlined above. The committee shall file a report with the 49th legislature on its activities, including any analysis or recommendations it may have.

(c) The appropriation for major expansion of Montana state prison contains sufficient funds to reimburse committee members as provided in 5-2-302 while engaged in authorized committee business.

Complete Cisel Hall Remodel and Addition, EMC	$ 625,000	
Construct New DNRC Building, Capitol Complex	6,958,000	
Construct Engineering Laboratory/Classroom Building, Tech	4,250,000	
Expand Greenhouse/Headhouse Complex, MSU	5,302,000	
Purchase Riverfront Land, UM	500,000	
Construct Veterans' and Pioneer Memorial Building Addition, Capitol Complex	2,063,295	
Renovate Social Science Building, UM	499,000	
Airport Improvements, Statewide	1,300,000	
Cowan Hall Remodel, NMC	175,000	
Construct Office/Laboratory, Western Triangle Agricultural Research Center	121,000	
Moss Mansion Land Purchase, Billings	50,000	
Construct Fish Hatchery, Creston Springs		455,000

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Agency/Program	BPICA	Other Appropriated Funds
Renovate Fish Hatchery, Great Falls		1,900,000
Renovate Fish Hatchery, Big Timber		500,000
Glasgow Regional Headquarters		220,000

Section 6. **Planning and design.** The Department of Administration may proceed with the planning and design of capital projects prior to the sale of bonds or the receipt of other appropriated funds. The Department may utilize interaccount loans past 1983 fiscal yearend in accordance with 17-2-107 to pay such planning and design costs incurred prior to the receipt of bond proceeds or other appropriated funds.

Section 7. **Capital projects — contingent funds.** If any capital project is financed in whole or in part with appropriations contingent upon the receipt of other appropriated funds, the Department of Administration may not let such projects for bid until the agency has submitted a financial plan for approval by the director of the Department of Administration. No such financial plan may be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding levels provided in this act for that project; or

(2) the scope of the project must be substantially altered or revised from the preliminary plans presented for that project in the 1983-85 Long-range Building Program presented to the 48th Legislature.

Section 8. **Legislative consent.** The appropriations authorized in this act must be considered as legislative consent for the capital projects contained in this act within the meaning of 18-2-102.

Section 9. **Appropriation.** Contingent on passage of House Bill 511, there is appropriated from the general fund to the department of administration an amount sufficient to pay all interest and principal due and owing on bonds issued and sold by the board of examiners pursuant to House Bill 558, and the department of administration is hereby irrevocably instructed to provide for payment of principal, interest, and redemption premium on such bonds, if any, from money in the general fund and, if the general fund is not sufficient for such purpose, to provide for payment thereof from any other funds of the state legally available for payment thereof.

Section 10. **Department of fish, wildlife, and parks — bond payment.** The department of fish, wildlife, and parks shall transfer prior to the payment date sufficient funds to retire $3,075,000 of the general obligation bonds authorized by the 48th legislature and the board of examiners, respectively. This payment obligation is not enforceable by bondholders.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part

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of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective date.** This act is effective on passage and approval.

Approved April 29, 1983.

HOUSE BILL NO. 901

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF ADMINISTRATION FOR PAYMENT OF EMERGENCY AND DISASTER ASSISTANCE CLAIMS FOR FLOOD DAMAGE OCCURRING IN MAY 1981; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund to the Department of Administration for the fiscal year ending June 30, 1983, $152,365 to pay claims approved and authorized under 10-3-311 for flood damage that occurred in the state in May 1981, as declared in the Governor's proclamations dated May 22 and 26, 1981. Any unspent balance of this appropriation must revert to the general fund.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 26, 1983.

HOUSE BILL NO. 907

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF REVENUE FOR THE FISCAL YEAR ENDING JUNE 30, 1983, FOR THE PURPOSE OF COMPLETING PAYMENT OF THE LIGHT VEHICLE FEE REIMBURSEMENT DUE YELLOWSTONE COUNTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund for the fiscal year ending on June 30, 1983, $42,539.81 to the Department of Revenue for the purpose of paying the 1983 light vehicle fee reimbursement due Yellowstone County.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 18, 1983.

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HOUSE BILL NO. 919

AN ACT TO APPROPRIATE FUNDS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR PUBLIC SCHOOL SUPPORT OTHER THAN FOR SPECIAL EDUCATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** All revenues received under the provisions of 20-9-343 for state equalization aid are appropriated to the Superintendent of Public Instruction for the biennium ending June 30, 1985, for public school support other than for special education. The remaining balance of the general fund contingency appropriation in House Bill No. 611, Laws of 1981, for the biennium ending June 30, 1983, is reappropriated to the state equalization aid earmarked revenue account for the biennium ending June 30, 1985.

Section 2. **General fund appropriation.** There is appropriated from the general fund $11,500,000 for the biennium ending June 30, 1985, to be used to the extent funds appropriated in section 1 are insufficient to finance the maximum budget schedules for public schools excluding special education.

Approved April 26, 1983.

HOUSE BILL NO. 922

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF REVENUE TO SATISFY A JUDGMENT AGAINST THE DEPARTMENT OF REVENUE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund to the Department of Revenue the sum of $3,814.74 or so much thereof as may be necessary to satisfy the judgment against the Department of Revenue of the State of Montana and in favor of Robert Kropp, Doris Kropp, and Blue Cross of Montana, entered September 22, 1982, by the District Court of the Eighth Judicial District of the State of Montana, in and for the County of Cascade, in Cause No. CDV-82-715, entitled "State of Montana, ex rel., Robert P. Kropp and Doris A. Kropp and Blue Cross of Montana, Plaintiffs, v. Montana Department of Revenue, an agency of the State of Montana; Charles Nebel, Cascade County Assessor, and Nick Lazanas, Cascade County Reappraisal Officer, Defendants", which decision has become final as a result of an order of dismissal of the appeal of the Department of Revenue by the Supreme Court, pursuant to motions to dismiss filed by the Department of Revenue and the plaintiffs

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and respondents; said order of dismissal having been issued on February 9, 1983, and filed on February 10, 1983, in Cause No. 83-12.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved April 27, 1983.

HOUSE BILL NO. 924

AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF REVENUE FOR THE PAYMENT OF A JUDGMENT FOR ATTORNEY FEES, COSTS, AND DISBURSEMENTS AGAINST THE DEPARTMENT, TOGETHER WITH INTEREST THEREON; PROVIDING THAT THE APPROPRIATION IS NONJUDGMENTAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $11,950.26 from the general fund to the Department of Revenue to satisfy the judgment for attorney fees, costs, and disbursements, as ordered by the District Court, in the case of R. Peyton Hovey v. Department of Revenue, Civil Cause No. 47316, County of Lewis and Clark. There is also appropriated $347, or so much thereof as may be necessary, from the general fund to the Department of Revenue which the Department shall use to pay interest on such judgment, calculated at a rate of 10% from March 16, 1983, the date of the judgment, to June 30, 1983. If the judgment is paid by the Department prior to June 30, 1983, the excess portion of the appropriation for interest on the judgment shall revert to the general fund.

Section 2. **Appropriation nonjudgmental.** By appropriating the above sum, the Legislature is not passing judgment on the merits of the case for which the appropriation is made.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved April 26, 1983.

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RESOLUTIONS

ENACTED BY THE

Forty-eighth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1983

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RESOLUTIONS

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN THEIR PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules are adopted:

CHAPTER 1
Presiding Officer - Decorum, Order and Debate

1-1. The presiding officer of the Senate is the president, and the presiding officer of the House of Representatives is the speaker. The presiding officer of each house shall take the chair on every legislative day at the hour to which that house adjourned at the last sitting. After call to order, prayer by the chaplain, and roll call, a report on the journal for the preceding legislative day shall be given in the presence of a quorum, and each house shall proceed with the regular order of business.

1-2. The presiding officer, or any member acting as presiding officer, of each house shall preserve order and decorum, and in case of disturbance or disorderly conduct, may order the galleries or lobbies to be cleared.

1-3. The presiding officer of each house has general control and direction of the hall, chamber, rooms, passages, and corridors of the house over which he presides. Reporters on assignment in either house are subject to placement by the presiding officer.

1-4. The presiding officer of each house shall decide all questions of order, subject to an appeal by any member seconded by two other members. No member may speak more than once on an appeal without the consent of a majority of the house of which he is a member.

1-5. When a member desires to speak he shall rise and address the presiding officer and, being recognized, shall speak standing in his place unless the presiding officer grants permission to speak from some other place on the floor. When two or more members rise at the same time the presiding officer shall name the member who is to speak first.

1-6. When a member has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the member is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the chief clerk or secretary.

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1-7. Questions of privilege are: first, those affecting the collective rights, safety, dignity, and integrity of the proceedings of either house; and second, those affecting the rights, reputation, and conduct of individual members of either house in their capacity as members. A question of privilege affecting either house collectively takes precedence over a question of privilege affecting an individual member.

1-8. The presiding officer of each house shall sign all subpoenas approved or issued by the house over which he presides.

1-9. (1) A communication or paper shall be addressed to the presiding officer and shall bear the name of the person submitting it. When the reading of a paper is called for and a member objects, it shall be determined by a vote of the house without debate. This subsection does not apply to bills or to communications from the governor or the other house.

(2) A paper for or against proposed legislation may not be placed on the desks of the members or circulated within the chamber unless the person responsible has signed it and has received permission from the presiding officer to distribute it in the house concerned.

1-10. When the presiding officer is presiding, he shall vote as any other member and may not vote a second time.

CHAPTER 2
Meetings, Quorums, and Attendance

2-1. The hour of meeting of the Senate and House of Representatives may be as ordered by the Senate or House.

2-2. Lobbying on the floor of the Senate or House of Representatives is prohibited during the session and within one hour prior to the commencement of a session and within one-half hour after recess or adjournment.

2-3. The sessions of the legislature and of the Committee of the Whole, all committee meetings, and all hearings shall be open to the public (Montana Constitution, Art. V, Sec. 10(3)).

2-4. Neither house shall, without the consent of the other, adjourn or recess for more than three days, nor to any other place than that in which the two houses shall be sitting (Montana Constitution, Art. V, Sec. 10(5)).

2-5. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

2-6. Unless he is excused, a member of the House or Senate shall be present at every sitting of the house of which he is a member.

2-7. In the absence of a quorum, a majority of members present in either house may compel the attendance of absent members by ordering a call of the house of which they are members.

2-8. If a quorum is present, five members of the Senate may order a call of the Senate, and fifteen members of the House of Representatives may order a call of the House.

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2-9. On a call of either house, a member who refuses to attend may be arrested by the sergeant-at-arms or any other person, as the majority of such members present shall direct. When the attendance of an absent member is secured after a call of either house, if the house of which he is a member refuses to excuse his absence, he shall not be paid any expense payments during his absence and is liable for the expenses incurred in procuring his attendance.

2-10. During a call of either house, all business of that house shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

2-11. If either house is in session upon a given day, whether or not the other house is in session, that day shall constitute a legislative day.

CHAPTER 3
Legislative Employees

3-1. The legislature shall prescribe the compensation of the employees of each house by joint resolution. Each house shall prescribe the duties of its officers and employees, and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

3-2. The Legislative Council shall be responsible for maintaining personnel files.

3-3. The committee on legislative administration of each house shall appoint a secretary for a standing or special committee on recommendation of the committee chairman, subject to the approval of the respective house. A secretary for a standing or special committee is immediately responsible to the committee chairman, but when not occupied with the duties of a committee, shall work under the direction of the chief stenographer of each house. The Legislative Council shall hire all engrossing and enrolling typists and proofreaders, who are under the direction of the bills committee.

3-4. The presiding officer and the majority and minority floor leader of each house may each appoint a private secretary.

3-5. The secretary of the Senate and chief clerk of the House of Representatives are responsible to the presiding officers of their respective houses. Their duties are to:

(a) have custody of all records, bills, documents, and other papers;

(b) supervise the making and examination of the journal and the handling of bills and resolutions;

(c) deliver to the secretary of state at the close of each session the journal, bill books, and resolution books, and all copies of introduced bills and joint resolutions;

(d) collect from the chairmen or secretaries of all standing committees, special committees, and conference committees the minutes of such committees and deliver them to the state historical society. (See Rule 7-4)

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3-6. Journal clerks, bill clerks, typists, and other employees responsible for legislative functions, except secretaries for standing or special committees, secretaries to presiding officers, and secretaries to majority and minority floor leaders, are immediately responsible to the secretary of the Senate or the chief clerk of the House, subject to the general supervision of the presiding officer.

3-7. The duties of the engrossing and enrolling clerks are:

(a) to engross or enroll all bills delivered to them within 48 hours after they have been received, unless further time is granted, in writing, by the presiding officer of the house in which the bill originated;

(b) to correct clerical errors, with the consent of the secretary of the Senate or chief clerk of the House of Representatives, in any bill originating in the house by which they are employed. Clerical errors such as the following may be corrected:

(i) errors in spelling

(ii) errors in numbering sections

(iii) adding or deleting underlining or lines through matter to be stricken

(iv) material copied incorrectly from the Montana Code Annotated.

The secretary of the Senate or chief clerk of the House shall obtain written permission from the principal sponsor before such corrections are made.

When a committee is the sponsor of a bill, any member thereof so designated by the chairman may be the principal sponsor for the purpose of this section.

3-8. (1) The sergeants-at-arms are responsible to the presiding officers of their respective houses. Their duties are to:

(a) maintain order under the direction of the presiding officer;

(b) execute commands and serve all processes;

(c) receive, distribute, and have custody of supplies.

3-9. The assistant sergeants-at-arms, doorkeepers, watchmen, janitors, pages, and other employees responsible for general housekeeping functions are immediately responsible to the sergeant-at-arms, subject to the general supervision of the presiding officer.

3-10. The duty of the chaplain of each house is to open each day's session with a prayer.

3-11. A legislative aide is a person who has registered with the clerk of the House or secretary of the Senate and has been issued a distinctive identification form such as a name tag. Such identification may be issued only upon receiving written verification from a member that the person involved is serving him as an aide. A person may not represent himself to

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be a legislative aide unless he carries such identification. The sergeants-at-arms and doorkeepers shall enforce this rule. Legislative aides must be of legal age unless otherwise approved by the presiding officer.

No member may designate more than one aide without the approval of the rules committee of the house involved.

Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

3-12. An employee, legislative aide, or legislative intern of either house is prohibited from lobbying as defined in Section 5-7-102(1), MCA. However, such person may testify before a committee of either house on the request of the committee. Any person violating this rule shall be discharged.

3-13. Disputes or complaints involving the competency or decorum of a legislative employee shall be referred to the committee on legislative administration of the house by which the employee is employed. The committee, in its discretion, may dismiss, suspend, or retain the employee. The committee on legislative administration shall periodically review the roster of employees and shall dismiss surplus employees.

3-14. The offices of the Legislative Council shall serve both the Senate and House of Representatives as required.

The Council staff shall prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report and distribute the report to legislative leaders in each house and to members of the Senate committee on finance and claims and House committee on appropriations.

3-15. Contracts for purchase or lease of equipment and supplies made during the legislative session shall be made on the approval of the committee on legislative administration of each house, subject to the review of the presiding officer of the respective house. Purchase orders shall be issued by Legislative Council staff and accounting records kept in that office.

CHAPTER 4
Order of Business

4-1. After prayer, roll call, and report on the journal, the order of business of the Senate and House of Representatives is as follows:

(1) Communications and petitions

(2) Reports of standing committees

(3) Reports of select committees

(4) Messages from the governor

(5) Messages from the other house

(6) Motions

(7) First reading and commitment of bills

(8) Second reading of bills (Committee of the Whole)

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(9) Third reading of bills and consent calendar bills

(10) Unfinished business

(11) Special orders of the day

(12) Announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vo e. Unless otherwise specified in the motion to recess, the house involved shall revert to Order of Business No. 1 when reconvening after a recess.

CHAPTER 5
Motions

5-1. When a motion is made it shall be restated by the presiding officer and, if requested by the presiding officer or a member, shall be reduced to writing and read aloud. A motion may be withdrawn by the member making it at any time before it is amended or voted upon.

5-2. When a question is under debate no motion may be made except the following privileged and subsidiary motions, which have precedence in the order listed:

(1) to adjourn

(2) for a call of the house

(3) to recess

(4) question of privilege

(5) to lay on the table

(6) for the previous question

(7) to postpone to a certain day

(8) to refer or commit

(9) to amend

(10) to postpone indefinitely.

A question may be indefinitely postponed by a majority roll call vote of all members present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration made pursuant to Rule 5-4.

5-3. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

5-4. Any member may, on the day the vote was taken or on the next day the house in which the action was taken is in session, move to reconsider the question. A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the house concerned, and thereafter any member may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made. A motion to recall a bill from the other house

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constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the other house may be made only under Order of Business No. 6 and under that order of business takes precedence over all motions except motions to recess or adjourn.

5-5. When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

5-6. (1) Except as provided in subsection (2) of this rule, the effect of moving the previous question, if adopted, is to close debate immediately, to prevent the moving of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

5-7. A call of the house is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

5-8. The following motions are not debatable:

(1) to adjourn

(2) for a call of the house

(3) to recess

(4) for parliamentary inquiry

(5) for suspension of the rules

(6) to lay on the table

(7) for the previous question

(8) to limit, extend the limits of, or to close debate

(9) to amend an undebatable motion

(10) to divide a question

(11) to pass business in Committee of the Whole

(12) to take from the table

(13) a decision of the presiding officer, unless appealed or unless he submits the question to the house for advice or decision

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

5-9. A member may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

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5-10. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

CHAPTER 6
Bills and Resolutions

A. Form of Bills — Definition of Resolutions — General Provisions

6-1. The only types of instruments other than bills which may be introduced in either house of the legislature are as follows:

(1) A simple resolution is a formalized motion passed by one house only and bears the heading "House Resolution" or "Senate Resolution". It may be used only to adopt or amend the rules of one house, to make recommendations concerning the districting and apportionment plan as provided by Article V, section 14, subsection (3), of the Montana Constitution, or to provide for the internal affairs of the house adopting it. It does not require three readings or a roll call vote. A member offering a simple resolution may read it in his place before introduction. When a simple resolution has been introduced, it shall be referred to a committee. Final action shall be taken on the Committee of the Whole report. The transmittal of copies of simple resolutions is the responsibility of the chief clerk or secretary of the house of origin.

A copy of every simple resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

(2) A joint resolution must be adopted by both houses and is not approved by the governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for Legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; or

(j) direct changes to, repeal, or direct adoption of a rule in the Montana Administrative Code.

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Except as otherwise provided in these rules or the Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

A copy of every joint resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

6-2. All bill drafting requests shall require a legislative sponsor. Bills shall be typewritten on paper with numbered lines and shall be introduced in quadruplicate. Bills shall be numbered at the foot of each page (except page 1) and shall have white covers of a substantial material. In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined. Sections of the Montana Code Annotated repealed or amended in a bill shall be stated in the title, except for general appropriation bills and bills for the codification and general revision of the laws. Introduced bills will be reproduced on white paper and distributed to legislators.

6-3. No bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain more than one subject, which shall be clearly expressed in the title. The enacting clause of every law shall be as follows: "Be it enacted by the legislature of the state of Montana".

A bill shall be used to propose amendments to the Constitution of the State of Montana and shall not be subject to the veto of the governor (Montana Constitution, Art. VI, Sec. 10(1)).

6-4. All appropriation bills shall originate in the House of Representatives.

The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive, and judicial branches of state government, interest on public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject (Montana Constitution, Art. V, Sec. 11(4)). Appropriation bills for the operation of the legislature shall be introduced by the chairman of the House committee on appropriations.

6-5. Every statute, unless a different time is prescribed therein, takes effect on October 1 following its passage and approval, except one that provides for appropriation by the legislature of public funds for a public purpose, which takes effect on July 1 following its passage and approval unless a different time is prescribed therein. Every joint resolution, unless a different time is prescribed therein, takes effect on its passage (Sections 1-2-201 and 1-2-202, MCA).

B. Introduction — Bill Limit

6-6. (1) A legislator may not request more than five bills from the Legislative Council nor may a legislator introduce more than five bills. This limit does not apply to:

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(a) bills requested prior to the convening date of each session;

(b) interim committee bills;

(c) state agency bills;

(d) code commissioner bills;

(e) resolutions;

(f) standing committee bills;

(g) appropriation bills; or

(h) revenue bills.

(2) Bills and joint resolutions will be checked by the staff of the Legislative Council prior to introduction for proper format, style, and legal form. Bills will be entered on the automated bill drafting equipment, typed, and delivered in quadruplicate to the requesting legislator. A stamp shall be affixed to the original bill cover and signed to indicate Council review. If such stamp is not affixed, the bill may not be introduced.

(3) During a session a bill may be introduced by endorsing it with the name of a member and presenting it to the chief clerk of the House of Representatives or secretary of the Senate in quadruplicate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill shall be introduced in the house in which the legislator whose name appears first on the bill is a member. The chief joint sponsor's name shall appear immediately to the right of the first sponsor's name. Bills, joint resolutions, and simple resolutions shall be numbered consecutively in each session of the legislature in separate series in the order of their receipt.

(4) Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department shall be so indicated following the names of the sponsors, "By Request of the ..... (Name of agency or committee)".

(5) Bills may be prefiled, numbered, and preprinted prior to a legislative session by the staff of the Legislative Council. Actual signatures may appear on the face of the prefiled bill, or signatures may be obtained on a consent form from the Legislative Council and the sponsor's name typed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

All prefiled bills will be made available to the public.

6-7. The following schedule must be followed for submission of drafting requests and introduction of bills and resolutions.

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	Request Deadline 5:00 P.M. Legislative Day	Introduction Deadline 5:00 P.M. Legislative Day
General Bills and Resolutions	10 (or 2 legislative days after delivery if delivery is after 14th day)	14
Revenue Bills	17	21
Committee Bills and Resolutions	36	40
Committee Revenue Bills	62	66
Appropriation Bills	No deadline	No deadline
Interim Study Resolutions	No deadline	No deadline
Joint Resolutions Concerning Administrative Rules	No deadline	No deadline

6-8. No bill may be introduced or received in a house after that house has finally rejected a bill during that session designed to accomplish the same purpose save upon approval by the rules committee of the house in which the bill is offered for introduction or reception.

Failure to override a veto does not constitute final rejection.

6-9. At least three-fourths of a standing committee must consent to the introduction of a committee bill.

C. First Reading and Referral

6-10. No motion affecting a bill is in order on its first reading except as provided in Joint Rule 6-6(5).

Upon introduction or reception of a bill, the chief clerk of the House or the secretary of the Senate shall publicly post upon a listing that bill by a summary of its title in the house of origin and by a summary of its title and by its history in the second house, together with a notation of the committee to which it has been assigned, and such posting shall constitute the first reading of the bill.

6-11. No bill shall be considered or become a law unless referred to a committee and returned therefrom.

6-12. Upon introduction or reception of a bill, it shall be referred to a committee by the presiding officer.

6-13. A bill may be rereferred at any time before its passage.

D. Amendments and Substitute Bills

6-14. No law shall be revised or amended or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended, or extended shall be reenacted and published at length.

6-15. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

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6-16. A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted so long as the new matter is relevant to the title and subject of the original bill. A substitute bill shall be considered as an amendment and not as a new bill.

6-17. The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute the new bill, recommending also any necessary changes in the title. If a committee report recommending a substitute for a bill originating in the other house is adopted, the substitute bill shall be printed.

6-18. Amendments to a bill by the second house shall not be further amended by the house in which the bill originated, but must either be accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill shall again be placed on third reading in the house of origin. The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

6-19. If a majority of a house adopts a recommendation for the passage of a bill originating in that house after it has been returned from a committee with amendments, the bill shall be printed on yellow paper with all amendments incorporated into the printed copies. If the bill has been returned from a committee without amendments, only the first sheet shall be printed on yellow paper, and the remainder of the text incorporated by reference to the preceding printed version of the entire bill. Bills referred to the bills committee of the house of origin for printing must be reported within three days unless further time is granted by that house.

E. Engrossing and Enrolling

6-20. When a bill has been reported favorably by Committee of the Whole of the house of origin and the report has been adopted, the bill shall be engrossed under the direction of the bills committee, and when reported correctly engrossed by the committee shall be placed on the calendar for third reading on the succeeding legislative day. Committee of the Whole amendments shall be included in the engrossed bill. Copies of the engrossed bill to be distributed to legislators will be reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it may be engrossed without retyping, and only the first sheet shall be printed on blue paper with the remainder of the text incorporated by reference to the preceding printed version of the entire bill.

If a bill is amended by the standing committee or Committee of the Whole in the second house, the amendments will be included in a reference bill and distributed in the second house for third reading consideration. The amendments will also be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments will be distributed in the original house.

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6-21. When a bill has passed both houses it shall be enrolled under the direction of the bills committee of the house of origin. An original and two duplicate typewritten copies of the bill shall be enrolled, free from all corrections and errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter shall be underlined and matter stricken with a line through it shall be omitted. The original and two copies of the bill shall be red lined. The history of the bill shall also be enrolled and placed with the bill in a white manuscript cover, upon which is written the number of the bill and the title. The Legislative Council staff shall file a copy of the history with the law library.

When the enrolling has been completed, the bill shall be examined by the sponsor and the bills committee and reported correctly enrolled.

The correctly enrolled bill shall be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which event it shall be signed that day. The fact of signing shall be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he shall be permitted to do so. The bill shall then be transmitted to the other house where the same procedure shall be followed.

A bill that has passed both houses of the legislature by the 90th day may be enrolled; clerically corrected by the presiding officers, if necessary; signed by the presiding officers; and delivered to the governor not later than 5 days after the 90th legislative day. All journal entries authorized under this rule will be entered on the journal for the 90th day.

The original and two copies signed by the presiding officer of each house shall be presented by the bills committee to the governor. The bills committee shall take a receipt from the governor and shall report to the house the day and hour of such presentation, which shall be entered in the journal. The original shall be filed with the secretary of state. Signed copies with chapter numbers assigned pursuant to Section 5-11-204, MCA, shall be filed with the clerk of the supreme court and the Legislative Council.

F. Second Reading — Committee of the Whole

6-22. All bills, except consent calendar bills, which have been reported by a committee, accepted by the house concerned, and printed shall be posted on the calendar for consideration by Committee of the Whole. The secretary of the Senate or chief clerk of the House shall record the time each bill is received and the time the bill is placed on members' desks. Until the 50th legislative day, one day must elapse between the time a committee approved bill is placed on the members' desks and consideration by Committee of the Whole. Bills shall be arranged on the calendar in numerical order unless they are companion bills or are otherwise ordered by the house or Committee of the Whole of the house concerned.

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6-23. Every bill considered in Committee of the Whole shall be read by a summary of its title and considered section by section.

All Committee of the Whole amendments shall be prepared and delivered to the clerk for reading before the amendment is voted on. The amendment form will include the date and time of the amendment. Each rejected proposed amendment shall be identified and kept in the office of the chief clerk of the House or secretary of the Senate. Upon adjournment, the text of such amendments shall be delivered to the state archives.

6-24. Prior to adoption of a Committee of the Whole report, a member may move to segregate a bill. If the motion prevails, the bill remains on second reading.

6-25. When a Committee of the Whole report on a bill is rejected, the bill shall remain on second reading.

6-26. Either house may resolve itself into a Committee of the Whole by approval of a motion for that purpose. So far as may be applicable, the rules governing each house shall be observed when that house resolves itself into a Committee of the Whole, except as follows:

(1) The only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

(2) The committee may not appoint subcommittees.

(3) The committee may not punish its members for misconduct, but may report disorder to the house concerned.

(4) Unless otherwise prescribed by either house before going into Committee of the Whole, a member may speak as often as he is recognized and for as long each time as is allowed in debate in the particular house.

6-27. After a Committee of the Whole has been formed, the presiding officer shall appoint a chairman to preside. Upon resuming the chair, the presiding officer shall receive the report of the chairman of the committee and the house shall take action on the report.

G. Third Reading — Consent Calendar — Governor's Veto

6-28. No bill shall become a law except by vote of a majority of all the members present and voting in each house. On final passage the vote shall be taken by ayes and noes, and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(1) and (2)).

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Any vote in one house on a bill proposing an amendment to the Montana Constitution where the mathematical possibility exists of obtaining the necessary two-thirds vote of the legislature will cause the bill to progress as though it had received the majority vote.

6-29. Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules. The first reading shall be as prescribed in Joint Rule 6-10; the second prior to debate in Committee of the Whole; and the third prior to final passage. No bill shall receive more than one reading on the same day except on the last legislative day. No amendment may be offered on the third reading.

6-30. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and referendum measures of the legislature, shall be submitted to the governor for his signature. If he does not sign or veto the bill within 5 days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may be polled on a bill approved by two-thirds of the members present or reconvened to reconsider any bill so vetoed. (Montana Constitution, Art. VI, Sec. 10.)

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

6-31. Upon receipt of a veto message the presiding officer shall read the message. After the reading a member may move that the governor's veto shall be overridden. A vote on the motion shall be determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

6-32. If the governor returns a bill to the originating house with his recommendations for amendment, such house shall reconsider the bill under its rules relating to amendment offered in Committee of the Whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the

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Whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations, the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

H. Transmittal of Bills — Revenue and Appropriation Bills

6-33. Each house shall transmit to the other with any bill all relevant papers. When a house bill is transmitted from the House of Representatives to the Senate, the secretary of the Senate shall give a dated receipt for the bill to the chief clerk of the House. When a Senate bill is transmitted to the House of Representatives, the chief clerk of the House shall give a dated receipt to the secretary of the Senate.

6-34. No bill, except for appropriation bills, revenue bills, and amendments considered by joint committee, need be acted upon (save for reference to a committee by the presiding officer) if transmitted from one house to the other after the 45th legislative day, but shall be held pending in the house to which it is transmitted unless two-thirds of the members present and voting determine that the bill shall be acted upon. Amendments, except to appropriation bills and revenue bills, shall likewise be deferred for consideration if transmitted after the 70th legislative day.

A revenue bill is one which would either increase or decrease tax collections.

Revenue bills originating in the Senate shall be transmitted to the House on or before the 50th day, unless two-thirds of the members present and voting in the House determine that the bill may be transmitted after the 50th day. House amendments to such bills shall be transmitted by the House to the Senate on or before the 70th day unless two-thirds of the members present and voting in the Senate determine that such an amendment may be transmitted after the 70th day.

Appropriation and revenue bills originating in the House shall be transmitted to the Senate on or before the 70th day unless two-thirds of the members present and voting in the Senate determine that the bill may be transmitted after the 70th day. Senate amendments to such bills shall be transmitted by the Senate to the House on or before the 85th legislative

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day unless two-thirds of the members present and voting in the House determine that such an amendment may be transmitted after the 85th day.

Interim study resolutions and joint resolutions concerning administrative rules may be transmitted at any time during a session.

6-35. When a bill has received its third reading or has been rejected, the house that considered the bill shall as soon as possible transmit it to the other house with notice of its action.

I. Fiscal Notes

6-36. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction, based on the Legislative Council staff recommendation.

The state budget director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return the same within six days, unless further time is granted by the presiding officer or committee making the request based upon a written statement from the budget director that additional time is necessary to properly prepare the note.

A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. All fiscal notes shall be printed and placed on the members' desks.

Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

A fiscal note also may be requested on a bill and on an amendment by:

(1) a committee considering the bill, or

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading, or

(3) the chief sponsor through the presiding officer.

The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note (Title 5, chapter 4, part 2, MCA).

CHAPTER 7
Committees

7-1. The committee on legislative administration of each house shall consider all matters concerned with seating, mileage and expenses, legislative employees, the control of the legislative property, and the budgeting

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for and expenditure of appropriations for the operation of the legislature, in cooperation with the Legislative Council staff.

7-2. Upon request of any member of the house in which a bill is pending, a standing committee shall submit a written report in triplicate on any bill or matter referred to it within seven days after the request, unless, at the request of the committee and for good cause shown, further time is granted by the house concerned.

7-3. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the house concerned.

7-4. All committees and subcommittees shall keep minutes of their meetings and, at the close of the session, shall make an original and two complete copies and shall turn the original of the minutes over to the chief clerk of the House or secretary of the Senate for delivery to the historical society. The Legislative Council and the law library shall each be given one copy of the minutes.

7-5. The committee on bills and journal, the rules committee, and conference committees may report at any time, except during a call of the house or when a vote is being taken. Reports from the bills and journal committee shall stand approved without formal action.

7-6. All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate committee on finance and claims and the House committee on appropriations, and then by each separately. Meetings of the joint committee shall be held upon call of the chairman of the House committee on appropriations who shall be chairman of the joint committee.

7-7. The chairman of each committee has general control and direction of the hall and committee room of the committee over which he presides, subject to the control of the presiding officer under Rule 1-3. Except as provided in Joint Rule 7-6, the chairman of the Senate committee shall be chairman of all joint committees.

7-8. If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the Senate and the House of Representatives cannot agree, the other house shall appoint a committee consisting of the same number of members. The time and place of all conference committee meetings shall be agreed upon by their chairman and be announced from the rostrum. This announcement is in order at any time. Failure to make this announcement shall not affect the validity of the legislation. The conference committees, having conferred, shall report to their respective houses the result of their conference. A conference committee shall confine itself to the disputed amendment.

If either house requests a free conference committee and the other house concurs, appointments will be made the same as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

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7-9. In joint committees other than conference committees, members vote individually and not by houses. Because conference committees are joint meetings of separate committees, in conference committees the committees from each house vote separately, and a majority of each committee must agree before any action may be taken.

7-10. Conference committee reports must give clerical instructions for enrolling by referring to the reference bill version.

When a conference committee report is filed with the secretary of the Senate or chief clerk of the House of Representatives, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day. On the final legislative day a conference committee report shall be placed on the calendar for immediate consideration on second reading and shall be further considered on third reading the same legislative day. If a conference committee report is adopted on third reading and the bill is of a type requiring more than a majority vote for passage, the bill shall again be placed on third reading in each house. This third reading vote must be used to determine if the required number of votes has been cast.

7-11. Accredited press representatives may not be excluded from any public legislative meeting or hearing and may not be prohibited from taking photographs, televising, or recording the committee or house hearings, subject to the discretion of the presiding officer in all matters of decorum and order.

7-12. A committee block scheduling system will be implemented in the Senate and House of Representatives. The schedule will be coordinated between houses and will be adjusted according to the legislature's work load.

CHAPTER 8
Rules and Journal

8-1. Each house shall keep a journal of its proceedings and may, in its discretion, from time to time, publish the same, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

8-2. The proceedings of each house which shall be entered on its journal include:

(1) the number of each bill when it is introduced and subsequently considered;

(2) every motion and the name of the member making it;

(3) proposed constitutional amendments which have been voted for by two-thirds of the members (Montana Constitution, Art. XIV, Sec. 8);

(4) committee reports;

(5) roll call votes;

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(6) messages from the governor and the other house;

(7) an entry of the oath taken by the members (Sec. 5-2-214, MCA).

The title of each bill shall be printed in the index of the permanent journals.

8-3. The bills and journal committee of each house shall supply the Legislative Council with the contents of the daily journal to be programmed on automated equipment, examine its journal, distribute a daily journal to all legislators, correct any errors, and report each legislative day immediately after roll call.

8-4. The journal of the Senate must be authenticated by the signature of the president, and the journal of the House of Representatives, by the signature of the speaker. The distribution of the completed journals shall be made by the Legislative Council (Sec. 5-11-201 through 5-11-203, MCA).

8-5. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any rules committee report recommending a change in joint rules shall be referred to the other house for concurrent action. Any new rule or any change in the rules of either house shall be transmitted to the other house for informational purposes.

8-6. Mason's Manual of Legislative Procedure governs the proceedings of the Senate and House of Representatives in all cases not covered by these rules.

8-7. The Legislative Council shall codify and publish in one volume the rules of the Senate, the rules of the House of Representatives, and the joint rules of the Senate and House of Representatives. Upon adoption, the secretary of the Senate and the chief clerk of the House of Representatives shall provide the office of the Legislative Council with one copy of all motions or resolutions amending Senate, House, or joint rules, and with copies of all minutes and reports of the rules committees. After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and House of Representatives.

8-8. Pursuant to the authority established in Sections 5-11-211 through 5-11-214, MCA, the following fee schedule is established for the legislative proceedings:

One complete set of the proceedings of any regular session, $250; an additional $150 is required for mailing.

One complete set of the proceedings of any special session, $25.

Single copies of bills, resolutions, amendments, status sheets, or other documents may be purchased according to the length of the document as follows:

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1-5 pages	$ .25
6-15 pages	$ .50
16-40 pages	$1.00
41-100 pages	$1.50
101-200 pages	$2.00
Over 200 pages	$4.00
Copies of enacted bills	cost of reproduction.

CHAPTER 9
Voting Procedure

9-1. Except as provided in Joint Rule 9-2, every member present when a question is put shall vote unless the house of which he is a member excuses him.

9-2. A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member.

9-3. Amendments to the constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members of the legislature, the amendment shall be deemed approved by the legislature (Montana Constitution, Art. XIV, Sec. 8).

9-4. When a measure requiring the concurrence of two-thirds of the members is under consideration, a majority vote is sufficient to decide any question relating to the measure short of third reading.

9-5. A roll call vote shall be taken on the request of two members, if the request occurs before the vote is taken.

9-6. On a roll call vote the names of the members shall be called alphabetically, unless an electrical voting system is used. A member may not vote or change his vote after the decision is announced from the chair. A member may not explain his vote until after the decision is announced from the chair.

9-7. (1) On third reading the question shall be stated as follows: "Senate (or House) bill number ..... having been read three several times, the question is, shall the bill pass (or be concurred in)."

(2) If an electrical voting system is used, the bell shall be rung after the question is stated and then the presiding officer shall state "Those in favor vote yes and those opposed vote no." After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause) "Does any member wish to change his or her vote?" (reasonable pause) "The clerk (secretary) will now record the vote."

9-8. Two members may pair on a measure that will be determined by a majority vote. On a measure requiring a two-thirds vote for adoption three members may pair, with two members for the measure and one member against. Pairing is permitted only when one of the paired members is excused when the vote is taken.

9-9. An agreement to pair must be in writing and dated and signed by the members agreeing to be bound, and must specify the duration of the

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pair. When an agreement to pair is filed with the secretary of the Senate or chief clerk of the House of Representatives, it shall bind the members signing until the expiration of time for which it was signed, unless the paired members sooner appear and ask that the agreement be cancelled.

9-10. Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in Committee of the Whole shall be recorded and made public. On final passage of any bill or joint resolution the vote shall be taken by ayes and noes and the names entered on the journal. Roll call votes shall be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole referred to in Joint Rule 6-26(1)(a) through (d). A roll call vote shall be taken on nonsubstantive questions on the request of two members, who may likewise on any vote, request that the ayes and noes be spread upon the journal. Roll call votes and other votes which are to be made public but are not specifically required to be spread upon the journal shall be entered in the minutes of the appropriate committee or of the appropriate house and a copy of such minutes shall be filed with the Montana state historical society (Montana Constitution, Art. V, Sec. 11(2)).

CHAPTER 10
Consent Calendar

10-1. Noncontroversial bills and simple and joint resolutions qualifying for the consent calendar may be processed by a standing committee according to the following provisions:

(1) To be eligible for the consent calendar, the legislation must receive unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. No appropriation or revenue bills may be recommended for the consent calendar.

(2) The legislation is then sent to printing to be prepared as a third reading version and specifically marked as a "consent calendar" item.

(3) Legislation shall be immediately posted (as soon as it is received from printing) on the consent calendar and must remain there for one legislative day before consideration under Order of Business No. 11, Special Orders of the Day. At that time, the presiding officer will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

(4) Any three members may submit written objections and the legislation must then be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be voted on following third reading.

(6) Legislation on the consent calendar will be voted on individually with the roll call vote printed in the journal as the final vote on those bills and resolutions.

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(7) Legislation passed on the consent calendar will then be transmitted to the second house.

CHAPTER 11
Statement of Legislative Intent

11-1. Definition. For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill will express the common understanding of those components of the legislature voting on the bill. This statement differs from a purpose clause, which is used in general to describe the broad overall objectives of a bill, while a statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

11-2. Limitation. A statement of intent may not accompany any bill that does not statutorily require one unless a committee (standing committee, committee of the whole or conference committee) agrees by a two-thirds vote to attach the statement.

11-3. Statement of intent to accompany bill — when — how. A statement shall accompany a bill as follows:

(1) Statements of intent are required for bills delegating rulemaking or licensing authority. The statement shall be entered on ALTER, printed on paper of the same color and in the same manner as the bill, and shall be attached to the bill. The statement shall be printed on paper of the same color as the bill and attached to the bill on all subsequent printings of the bill.

(2) The standing committee of the house in which the bill originates is responsible for authoring a statement of intent for a bill requiring one.

11-4. Modification. Any committee subsequently considering the bill may amend a previous statement. The statement of intent will be reflected in the history of the bill.

11-5. Conference committee on intent only. When the second house concurs in a bill without amendments but amends or supersedes a previous statement of intent, the bill may not be enrolled until both houses have agreed on a statement of intent. If the statement is attached to a bill that does not statutorily require one, the conference committee can delete the statement in its entirety.

A new statement of intent written by the second house will be processed in the same manner as a second house amendment.

A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

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SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF INSTITUTIONS TO GIVE THE NAME "BENNETT HALL" TO THE NEW WING AT THE MONTANA VETERANS' HOME IN COLUMBIA FALLS IN RECOGNITION OF THE EXCEPTIONAL PROFESSIONAL AND PUBLIC SERVICE RECORD OF THE LATE WILLARD FRANKLIN BENNETT, M.D.

WHEREAS, Willard Franklin Bennett personified the traditional values of a western American heritage by physically working his way through medical school, graduating in 1945 from the University of Kansas; and

WHEREAS, Dr. Bennett interned as a physician and surgeon in the United States Navy, serving aboard the U.S.S. Helena in World War II; and

WHEREAS, Dr. Bennett pioneered a general medical practice in then-booming Hungry Horse in 1948 and located in the emerging Columbia Falls in 1953; and

WHEREAS, Dr. Bennett exemplified not only a rare type of professionalism but an exceptional participation in public and civic service as Mayor of Columbia Falls, President of the Hungry Horse and Columbia Falls Chambers of Commerce, and Chairman of District No. 6 School Board; and

WHEREAS, Dr. Bennett served in the Montana Senate, 1967-1972, resigned to serve his patients, and later was elected to the Montana House of Representatives, 1978-1979; and

WHEREAS, Dr. Bennett was a driving force in bringing about improvements and expansion of the Montana Veterans' Home and served as physician to the institution from 1954 to 1979, where he had an abiding interest in the Home and its members; and

WHEREAS, since Dr. Bennett's untimely death, July 20, 1979, now leaves only a colorful memory and his remains are interred in the Montana Veterans' Home Cemetery, it seems right and proper that his unselfish record of service to his country and his fellow man be memorialized as a token of recognition and appreciation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Institutions give the name "Bennett Hall" to the new wing of the nursing home unit at the Montana Veterans' Home at Columbia Falls and that there be affixed an appropriate plaque designating the area in honor of Dr. Willard Franklin Bennett, physician, servant, and friend.

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SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING SUPPORT FOR THE MAUREEN AND MIKE MANSFIELD FOUNDATION AND THE DEVELOPMENT OF THE MANSFIELD CENTER FOR PACIFIC AFFAIRS AND THE MAUREEN AND MIKE MANSFIELD CENTER AT THE UNIVERSITY OF MONTANA.

WHEREAS, recent history presents a compelling message of an increasing need for expanded education and understanding among the people of the nations that surround the Pacific Ocean as economic and political ties among the nations grow; and

WHEREAS, Montanans feel a need to honor Ambassador Mike Mansfield, whose career in public service has become a symbol of integrity; and

WHEREAS, Mike Mansfield's career has always reflected his expertise in Pacific affairs; and

WHEREAS, distinguished leaders of our state and nation are moving forward with plans to establish the Maureen and Mike Mansfield Foundation in order to support the Mansfield Center for Pacific Affairs at Flathead Lake and the Maureen and Mike Mansfield Center at the University of Montana. These activities will honor Mike Mansfield and promote expanded communication and understanding among the people of the Pacific Rim nations; and

WHEREAS, once established, the centers will generate important economic and cultural activity in Montana; and

WHEREAS, the centers will add to the economic development of Montana by direct employment, by attraction of visitors, and through establishment of expanded trade opportunities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana express its support for the establishment of the Maureen and Mike Mansfield Foundation and the Mansfield Center for Pacific Affairs and the Maureen and Mike Mansfield Center at the University of Montana and pledge its efforts to help these programs become a reality.

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO AMEND JOINT RULES 6-1, 6-7, AND 6-34, RELATING TO CHANGES IN ADMINISTRATIVE RULES, TO MAKE THE JOINT RULES COMPATIBLE WITH STATUTORY AMENDMENTS MADE BY HOUSE BILL NO. 67.

WHEREAS, section 2-4-412, MCA, authorizing the Legislature to repeal or direct the amendment or adoption of administrative rules by joint resolution, is amended by the provisions of House Bill No. 67 to make the law

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consistent with the decision of the court in the case of The Montana Taxpayers' Association v. The Department of Revenue, Lewis and Clark County Civil No. 47126, which held that the Legislature could not constitutionally make changes to administrative rules by joint resolution; and

WHEREAS, the joint rules of the Senate and House of Representatives refer only to joint resolutions concerning changes to administrative rules; and

WHEREAS, the joint rules should be made compatible with the statutory changes made to section 2-4-412, MCA, by House Bill No. 67.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Joint Rules 6-1, 6-7, and 6-34 be amended to read:

"6-1. The only types of instruments other than bills which may be introduced in either house of the legislature are as follows:

(1) A simple resolution is a formalized motion passed by one house only and bears the heading "House Resolution" or "Senate Resolution". It may be used only to adopt or amend the rules of one house or to provide for the internal affairs of the house adopting it. It does not require three readings or a roll call vote. A member offering a simple resolution may read it in his place before introduction. When a simple resolution has been introduced, it shall be referred to a committee. Final action shall be taken on the Committee of the Whole report. The transmittal of copies of simple resolutions is the responsibility of the chief clerk or secretary of the house of origin.

A copy of every simple resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

(2) A joint resolution must be adopted by both houses and is not approved by the governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for Legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

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(i) ratify or propose amendments to the United States Constitution; or

(j) *advise or request the* repeal, *amendment,* or adoption of a rule in the Administrative *Rules of Montana.*

Except as otherwise provided in these rules or the Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

A copy of every joint resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House."

"6-7. The following schedule must be followed for submission of drafting requests and introduction of bills and resolutions.

	Request Deadline 5:00 P.M.	Introduction Deadline 5:00 P.M.
	Legislative Day	
General Bills and Resolutions	10 (or 2 legislative days after delivery if delivery is after 14th day)	14
Revenue Bills	17	21
Committee Bills and Resolutions	36	40
Committee Revenue Bills	62	66
Appropriation Bills	No deadline	No deadline
Interim Study Resolutions	No deadline	No deadline
Bills repealing or directing the amendment or adoption of Administrative Rules and Joint Resolutions *advising or requesting the repeal, amendment, or adoption of* Administrative Rules	No deadline	No deadline"

"6-34. No bill, except for appropriation bills, revenue bills, and amendments considered by joint committee, need be acted upon (save for reference to a committee by the presiding officer) if transmitted from one house to the other after the 45th legislative day, but shall be held pending in the house to which it is transmitted unless two-thirds of the members present and voting determine that the bill shall be acted upon. Amendments, except to appropriation bills and revenue bills, shall likewise be deferred for consideration if transmitted after the 70th legislative day.

A revenue bill is one which would either increase or decrease tax collections.

Appropriation and revenue bills shall be transmitted from the original house on or before the 70th day unless two-thirds of the members present and voting in the receiving house determine that the bill may be transmitted after the 70th day.

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Interim study resolutions, *bills repealing or directing the amendment or adoption of administrative rules,* and joint resolutions *advising or requesting the repeal, amendment, or adoption of* administrative rules may be transmitted at any time during a session."

SENATE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO NAME THE NEW DIVISION OF WORKERS' COMPENSATION BUILDING THE "MARGARET 'PEG' CONDON BUILDING".

WHEREAS, in 1981 the 47th Montana Legislature authorized the construction of a new building to house the Division of Workers' Compensation, which building is to be located in downtown Helena, and construction has begun on the building; and

WHEREAS, the building should be appropriately named; and

WHEREAS, Margaret "Peg" Condon, the current executive secretary for the Division of Workers' Compensation, has served the former Industrial Accident Board and its successor agency, the Division of Workers' Compensation, for over 50 years as an employee of the workers' compensation administrative agencies in Montana; and

WHEREAS, Margaret Condon has served under eight administrators of the workers' compensation administrative agencies in the State of Montana, beginning her service with the Industrial Accident Board in April of 1930; and

WHEREAS, Margaret Condon has assisted all those interested in the smooth and efficient operation of the workers' compensation system, including injured workers, agency administrators and personnel, insurance adjusters, insurance carrier representatives, employers, and the general public; and

WHEREAS, Margaret Condon is known to all who have daily contact with the workers' compensation system and is loved and respected by those individuals; and

WHEREAS, Margaret Condon has dedicated her life to the smooth and efficient operation of the workers' compensation system, and such service should be recognized by the Legislature and the people of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the new building that will house the Division of Workers' Compensation, which building is located in downtown Helena, be named the "Margaret 'Peg' Condon Building".

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Division of Workers' Compensation and to the building contractors for the preparation of appropriate signs designating the building as the "Margaret 'Peg' Condon Building".

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BE IT FURTHER RESOLVED, that the Senate and the House of Representatives of the State of Montana express their appreciation to Margaret Condon for her dedicated service to the workers' compensation system and the people of Montana.

SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING ALL MONTANA VETERANS OF THE UNITED STATES ARMED FORCES TO JOIN THE MONTANA LEGISLATURE IN REQUESTING THAT THE MONTANA CONGRESSIONAL DELEGATION INTRODUCE FEDERAL LEGISLATION TO HAVE CONGRESS DESIGNATE A NEW NATIONAL VETERANS' CEMETERY TO BE LOCATED IN MONTANA AND NAMED THE "ARLINGTON WEST NATIONAL CEMETERY".

WHEREAS, in recent years it has been publicized that Arlington National Cemetery is overcrowded and that veterans of the United States Armed Forces can no longer choose to be interred in this recognized national shrine dedicated to those who have served our great nation; and

WHEREAS, consideration should be given to honoring veterans by providing them with a new national shrine and cemetery for their final resting place.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That all Montana veterans of the United States Armed Forces are urged to join with the Montana Legislature in requesting the Montana Congressional Delegation to introduce federal legislation to have the United States Congress designate a new national cemetery, to be named the "Arlington West National Cemetery", to be located in Montana upon appropriate land controlled by the federal government and selected by the proper authorities and to be used for interring veterans of the United States Armed Forces and other persons who may, under federal law, be interred in open national cemeteries in the national cemetery system.

(2) That the Secretary of State send copies of this resolution to the members of the Montana Congressional Delegation and to the Montana chapters of the Veterans of Foreign Wars and the American Legion.

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO SEND DELEGATES TO THE WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE.

WHEREAS, the forests of the Western States play a vital role in the economic development of these states; and

WHEREAS, there is an obvious need for developing means to protect and foster these forests to maximize yield while protecting the resource for future generations; and

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WHEREAS, proper forest management and use are necessary for the protection and conservation of other important resources, such as wildlife, recreation, and scenic beauty; and

WHEREAS, the subjects that require interstate cooperation include but are not limited to insect infestations, conservation, production, and marketing, all of which know no state boundaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Committees of the Senate and the Speaker of the House of Representatives appoint two Senators and two Representatives, one from each party, to represent Montana on the Western States Legislative Forestry Task Force, which operates as a clearinghouse for opinions from all the various interests involved in the Western States forests and which includes among its duties a report to the Legislatures of the participating states and to the state delegations in the United States Congress concerning means of protecting and fostering the forests of the participating states.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives send copies of this resolution to the presiding officers of the Legislatures of Washington, Idaho, Oregon, Wyoming, Alaska, and California and to the Executive Director of the Western States Legislative Forestry Task Force.

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF ADMINISTRATION TO APPOINT A MEMBER OF THE HOMEBUILDING INDUSTRY TO THE MONTANA BUILDING CODE ADVISORY COUNCIL.

WHEREAS, the 43rd Legislature, through Senate Resolution No. 34, created the Montana Building Code Advisory Council, consisting of 11 members representing a cross section of the construction industry; and

WHEREAS, no member was listed to represent the conventional homebuilding industry on the Advisory Council; and

WHEREAS, conventionally built homes represent a very large part of the construction industry; and

WHEREAS, the building codes directly affect the conventional homebuilding industry and indirectly affect the people it serves.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That, in addition to the members currently appointed to serve on the Montana Building Code Advisory Council, the Department of Administration shall appoint a member from the conventional homebuilding industry, who shall have equal status with the other members and who shall serve at the pleasure of the Department.

SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES TO CONDUCT GOOD FAITH NEGOTIATIONS WITH THE SOVIET UNION ON THE REDUCTION OF NUCLEAR WEAPONS; TO STOP THE DEVELOPMENT, PRODUCTION, AND DEPLOYMENT OF NEW NUCLEAR WEAPONS BY THE UNITED STATES, THE SOVIET UNION, OR OTHER NATIONS OF THE WORLD; TO INCREASE FUNDING FOR HUMAN SERVICES AND JOBS PROGRAMS AS AGREED TO BY PRESIDENT REAGAN AND SPEAKER O'NEILL AND IN SO DOING TO REDUCE THE FEDERAL BUDGET DEFICIT; AND REQUIRING THE SECRETARY OF STATE TO SEND COPIES OF THIS RESOLUTION TO THE PRESIDENT OF THE UNITED STATES AND MONTANA'S UNITED STATES SENATORS AND REPRESENTATIVES.

WHEREAS, the United States is engaged in the largest peacetime military buildup in the nation's history; and

WHEREAS, this buildup amounts to many billions of dollars; and

WHEREAS, one of the greatest continuing challenges facing mankind is to prevent the outbreak of nuclear war; and

WHEREAS, there is increasing concern worldwide over the risk of nuclear war; and

WHEREAS, good faith negotiations between the United States and the Soviet Union on reduction of strategic and intermediate-range nuclear weapons are essential to the prevention of nuclear war, the proliferation of such weapons, and more productive utilization of world resources; and

WHEREAS, the recently agreed-to $4.1 billion jobs bill, a $3 billion extension of unemployment benefits, and $250 million for food and shelter for the homeless, which would initially bring jobs to over 360,000 Americans, by President Reagan and Speaker O'Neill are important steps in meeting this country's social responsibilities; and

WHEREAS, President Reagan and Speaker O'Neill have reached a bipartisan consensus on major portions of this bill with a final total agreement expected shortly; and

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WHEREAS, a bipartisan approach to the problem of unemployment and hunger would speed aid to those most in need; and

WHEREAS, a reduction in arms and more employment would yield a lower defense budget, stronger, more productive economy, lower budget deficit, and better economic and more healthful and safe future for all Americans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the President and the Congress of the United States are strongly urged to conduct good faith negotiations with the Soviet Union on the reduction of nuclear weapons; to stop the development, production, and deployment of new nuclear weapons by the United States, the Soviet Union, or other nations of the world; to increase funding for human services and jobs programs as agreed to by President Reagan and Speaker O'Neill and in so doing to reduce the federal budget deficit.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States and to Montana's United States Senators and Representatives.

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUGGESTING THAT ANY PLAN FOR REMODELING THE STATE CAPITOL INCLUDE WORKSPACE FOR LEGISLATORS.

WHEREAS, the people of Montana desire to maintain a citizen Legislature; and

WHEREAS, the public-minded citizens who are elected to the Legislature serve at personal sacrifice to themselves and their families, often at financial loss to their private enterprises; and

WHEREAS, the hectic and traumatic pace of a legislative session is stressful and physically demanding on all Legislators; and

WHEREAS, Legislators must put in long hours of investigation, research, and study in order to deal with the voluminous material with which they are faced each session.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That any plan adopted for the remodeling of the State Capitol include the reservation of workspace for Legislators where Legislators have access to a desk, a phone, and filing space.

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SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONSENTING TO THE BOARD OF REGENTS AUTHORIZING THE UNIVERSITY OF MONTANA TO RENOVATE THE CURRENT DORNBLASER STADIUM OR CONSTRUCT A NEW STADIUM COMPLEX.

WHEREAS, the University of Montana stadium is inadequate and potentially unsafe; and

WHEREAS, the University of Montana participates in the Big Sky Athletic Conference and Division 1-AA of the National Collegiate Athletic Association but has a stadium facility that is far below standard for this participation; and

WHEREAS, a special study committee of students, faculty, staff, and community representatives is developing a plan for improvement of the stadium; and

WHEREAS, the funding for renovation of the current stadium or construction of a new stadium will be from private gifts and from sources other than Student building fees, Regent building fees, or state-appropriated money, and no State Long-Range Building Program funds will be sought; and

WHEREAS, the project cost will reflect the option of renovation or construction finally approved, but is estimated not to exceed an amount of $4.5 million; and

WHEREAS, this project may need to begin during the coming biennium; and

WHEREAS, the Board of Regents has approved this project in principle, subject to a review of the project proposal and final authorization by the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature consents to the Board of Regents' authorization to the University of Montana to renovate Dornblaser Stadium or construct a new stadium complex at the University of Montana.

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING CITIZENS, LAW ENFORCEMENT OFFICIALS, AND THE MEDIA IN MONTANA FOR THEIR SUPPORT OF CRIMESTOPPERS, A VOLUNTARY EFFORT TO PREVENT CRIME AND MAKE MONTANA COMMUNITIES SAFER.

WHEREAS, Crimestoppers is an anticrime program that began in Albuquerque, New Mexico, in 1968; and

WHEREAS, there are 350 Crimestoppers programs operating nationwide, with 26 programs in Montana that provide protection to almost 80% of the State's population; and

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WHEREAS, the rewards offered by Crimestoppers, which vary from $50 to $1,000, are raised entirely by private donations; and

WHEREAS, the arrest and conviction rate in crimes reported to Crimestoppers is very high and often results in hundreds of thousands of dollars of recovered stolen merchandise; and

WHEREAS, the Crimestoppers program provides Montana citizens with significant tax savings and more efficient law enforcement.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature commends all Montana citizens, including law enforcement officials and the radio, television, and newspaper media, for their generous and unselfish work to promote, encourage, and sustain the Montana Crimestoppers program in communities throughout the State.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each Montana Crimestoppers organization in the State and to the Montana Crimestoppers/Crime Prevention Association, the Montana Board of Crime Control, the County Sheriffs' and Peace Officers' Association, the County Attorneys' Association, and the Montana Chiefs of Police Association.

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BONNEVILLE POWER ADMINISTRATION TO ADOPT A RATE STRUCTURE THAT WILL PROVIDE LOWER RATES FOR ITS DIRECT-SERVICE INDUSTRIAL CUSTOMERS.

WHEREAS, the Bonneville Power Administration is a federal power marketing agency that sells electric power to federal agencies, public- and investor-owned utilities, and certain direct-service industrial customers; and

WHEREAS, at a time when the Bonneville Power Administration had excess electric power to sell, it induced many direct-service industrial customers to construct and operate plants in the Pacific Northwest in order that the use of electric power by such plants might subsidize the rates that residents would otherwise have had to pay; and

WHEREAS, these plants and the jobs they create have become an important element in the economic well-being of the Pacific Northwest in general, and in some cases, whole communities are dependent on such plants and jobs; and

WHEREAS, in its recent rate structures, the Bonneville Power Administration has ignored the historic benefit it has derived from its direct-service industrial customers, as well as their importance to the economy of the Pacific Northwest.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Bonneville Power Administration is strongly urged to adopt a rate structure utilizing current surplus electricity for its direct-service industrial customers that will provide lower rates for electric power for the design life of their plant facilities, in recognition of the fact that such plants were built as part of a long-range commitment by such customers to the Bonneville Power Administration and to the citizens of the Pacific Northwest and in recognition of the fact that the continued operation of such plants is important to the economy of the Pacific Northwest.

(2) That the Secretary of State is directed to send a copy of this resolution to the following:

(a) the Bonneville Power Administration;

(b) the Federal Energy Regulatory Commission;

(c) the Montana delegation to the Congress of the United States;

(d) the Pacific Northwest Electric Power and Conservation Planning Council; and

(e) the Aluminum Workers International Union.

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PROTESTING PROPOSED CHARGES BY FEDERAL AGENCIES TO RURAL ELECTRIC AND TELEPHONE COOPERATIVES FOR RIGHT-OF-WAY USE AND PERMITS.

WHEREAS, through their agreements with the federal government and most specifically with the Rural Electrification Administration, the electric and telephone cooperatives of Montana are required to provide area coverage at the lowest possible cost and without profit, even to isolated and minimum revenue customers; and

WHEREAS, to provide such service it is necessary that the lines of such cooperatives cross United States Forest Service, Bureau of Land Management, and other government-owned lands; and

WHEREAS, the United States Forest Service, the Bureau of Land Management, and other federal agencies have granted permits to these cooperatives to cross their lands at no charge to the cooperatives; and

WHEREAS, it has now been proposed that these federal agencies impose initial and annual charges for such right-of-way use and permits, which would result in increased cost for basic electric and telephone service to the rural population of Montana; and

WHEREAS, payments to the federal government for such permits would constitute discrimination against the members of the cooperatives because

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the bylaws of the cooperative require members to grant right-of-way easements at no charge.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That this Legislature strongly protests proposals for the United States Forest Service and the Bureau of Land Management to charge rural electric and telephone cooperatives for right-of-way use and permits and strongly urges that such proposals be rescinded.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the United States Forest Service, the Bureau of Land Management, and the Montana Congressional Delegation.

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING MONTANA'S STATEHOOD CENTENNIAL IN 1989; URGING THE GOVERNOR TO BEGIN PLANNING AND COORDINATION; AND REQUESTING THE GOVERNOR TO MAKE RECOMMENDATIONS TO THE 49TH LEGISLATURE ON THE ADMINISTRATION OF CENTENNIAL ACTIVITIES.

WHEREAS, the great State of Montana will celebrate the 100th anniversary of her admission to statehood on November 8, 1989, and such an occasion merits a commemoration befitting the grandeur of her plains, the majesty of her mountains, and the heartiness of her people; and

WHEREAS, the rare event of statehood centennial offers unparalleled opportunities for educational, cultural, recreational, and promotional activities for residents of the State and its visitors; and

WHEREAS, many Montana communities and associations are celebrating their 100th birthdays in the years surrounding the statehood centennial year; and

WHEREAS, several other states in the region are planning for their statehood centennials in 1989 and 1990, and at least two neighboring Canadian provinces will serve as hosts to events of international significance during the decade of the eighties; and

WHEREAS, some citizens and selected state agencies have suggested that planning should capitalize on any complementary activities that may precede or follow Montana's statehood centennial year of 1989; and

WHEREAS, a centennial naturally invites reflections on the past and can be used to focus public attention on not only a future of choices, but a choice of futures; and

WHEREAS, appropriate actions in conjunction with a multiyear centennial celebration will require early planning, extensive citizen participation,

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and the investment of substantial energy and financial support from a variety of sources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor, using available resources and resourcefulness, is urged to pursue regional and interagency coordination and to involve citizens who are willing to assist on a volunteer basis in identifying possible opportunities and options relating to centennial planning.

BE IT FURTHER RESOLVED, that the Governor is requested to make recommendations resulting from the above activities to the 49th Legislature to initiate and guide formal centennial activities.

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE FEDERAL GOVERNMENT AND THE MONTANA DEPARTMENT OF HIGHWAYS TO COOPERATE WITH THE LOCAL GOVERNMENT OF STILLWATER COUNTY IN PROVIDING FUNDING TO REPAIR DAMAGES TO MONTANA SECONDARY HIGHWAY NO. 419 CAUSED BY TRANSPORTATION OF CHROMIUM FOR THE STRATEGIC MINERAL STOCKPILE PROGRAM OF THE UNITED STATES GOVERNMENT.

WHEREAS, during the 1950s and early 1960s, the federal government stockpiled chromium at the mines above Nye, Montana, as part of the federal program to stockpile strategic minerals; and

WHEREAS, the stockpiled chromium was sold to a private company, and between 1977 and 1982, was subsequently transported to the railhead at Columbus, Montana, for further shipment; and

WHEREAS, the chromium was transported over the 26 miles of Montana Secondary Highway No. 419 and, in the process, the road was left severely damaged and is generally unsafe for the several hundred permanent residents that depend upon the road for daily use; and

WHEREAS, it would be unfair to expect local taxpayers to assume the entire financial responsibility for repairing a road that was damaged due to a federal program for the entire nation's security; and

WHEREAS, neither the State of Montana nor the United States Government has expressed a willingness to work with the local government of Stillwater County to resolve the funding problems related to the damaged road.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urges both the Montana Department of Highways and the United States Government to cooperate with local government

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officials in Stillwater County in reaching an equitable means of financing the needed repairs to Montana Secondary Highway No. 419.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Director of the Montana Department of Highways; to President Reagan; to Elizabeth Dole, United States Secretary of Transportation; and to the Montana congressional delegation.

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF TAX CREDITS, TAX DEDUCTIONS, TAX EXCLUSIONS, AND TAX EXEMPTIONS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 49TH LEGISLATURE.

WHEREAS, the Legislature attempts to encourage various activities and conduct by providing tax credits to persons or entities who engage in the encouraged activities or conduct; and

WHEREAS, the Legislature allows tax deductions, tax exclusions, and tax exemptions in an attempt to further the public policy of the State of Montana; and

WHEREAS, the effect on the State of the various tax credits, tax deductions, tax exclusions, and tax exemptions is significant; in the case of the investment tax credit, the cost is $10 million per year; and

WHEREAS, there is no review of the effect of the tax credits, tax deductions, tax exclusions, and tax exemptions to determine if they actually promote the public policy or encourage the activities and conduct they are intended to encourage; and

WHEREAS, many of the tax laws of the State of Montana are tied directly to the federal tax laws and a change in the federal tax laws automatically changes Montana's tax laws; and

WHEREAS, there is no review to identify the class of taxpayers that benefits from each tax credit, tax deduction, tax exclusion, and tax exemption.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee is requested to:

(1) identify each tax credit, tax deduction, tax exclusion, and tax exemption, their cost to the State, and their benefit to the State;

(2) identify the underlying legislative purpose of each tax credit, tax deduction, tax exclusion, and tax exemption;

(3) study the effectiveness of each tax credit, tax deduction, tax exclusion, and tax exemption in achieving its underlying legislative purpose; and

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(4) identify the class of taxpayers who benefit from each tax credit, tax deduction, tax exclusion, and tax exemption.

BE IT FURTHER RESOLVED, that the Committee report the findings of the study to the 49th Legislature and, if necessary, draft legislation to implement its recommendations.

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE MONTANA SUPREME COURT, IN COOPERATION WITH THE STATE BAR OF MONTANA AND WITH STAFF ASSISTANCE OF THE LEGISLATIVE COUNCIL, TO STUDY AND PREPARE RECOMMENDATIONS FOR THE 49TH LEGISLATURE ON UPDATING AND CLARIFYING THE LAWS ON VENUE AND STATUTES OF LIMITATION.

WHEREAS, the statutory provisions on venue and statutes of limitation were enacted long ago and through the process of court interpretation and changing methods of practice no longer reflect on their face the present state of the law; and

WHEREAS, the present application of law relating to venue and statutes of limitation have evolved to the point that their present use is logical, useful, and consistent, but their statutory basis does not accurately reflect such usage; and

WHEREAS, because rules of venue and statutes of limitation are not clearly reflected in the statutes, they have been the cause of needless litigation requiring the Montana Supreme Court to constantly reiterate their present usage; and

WHEREAS, provisions relating to statutes of limitation have proven to be particularly archaic because different legal courses of action available today were not contemplated when the statutes were written, thus leading to interpretations that, while consistent over the years, are not apparent from a reading of the applicable statute;

WHEREAS, the Supreme Court Commission on the Rules of Evidence is a body having in its membership many persons with expertise in trial practice who are informed, both academically and practically, with respect to statutory provisions and court decisions on venue and statutes of limitation, and the Commission would be of invaluable service in studying statutory provisions and preparing a recommendation to conform them to present practice and interpretation; and

WHEREAS, the State Bar of Montana has a committee to study the law on statutes of limitation and the expertise of the committee could be of service to the Supreme Court in studying and formulating recommendations on statutes of limitation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That in order to have the statutory provisions on venue and statutes of limitation in the Montana Code Annotated accurately reflect the current usage and interpretations of those laws, it is requested that the Montana Supreme Court:

(1) supervise a study of the provisions in the Montana Code Annotated on venue and statutes of limitation to be conducted by the Montana Supreme Court Commission on the Rules of Evidence, in cooperation with the appropriate committee of the State Bar of Montana, and staffed by staff attorneys of the Legislative Council; and

(2) cause draft legislation to be prepared for consideration by the 49th Legislature based upon such study.

BE IT FURTHER RESOLVED, that the Secretary of the Senate send a copy of this resolution to the Chief Justice of the Montana Supreme Court.

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CREATION OF A UNIFIED COURT SYSTEM AND THE FINANCING OF SUCH A SYSTEM; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 49TH LEGISLATURE.

WHEREAS, Article VII, section 1, of the Montana Constitution vests judicial power of the State in the court system of the State; and

WHEREAS, Title 3 of the Montana Code Annotated prescribes the court system of the State of Montana; and

WHEREAS, neither the Montana Constitution nor state statutes establish a central administrative office for the court system of the State; and

WHEREAS, the lack of a central administrative office for the state court system results in a lack of formal coordination among the various district courts in such matters as the substitution of one judge for another who has been disqualified from acting; and

WHEREAS, differing standards of employment and compensation for court employees exist among the various district courts, leading to inequities between the work of the district courts; and

WHEREAS, it is recognized that the district courts act as an arm of the state government in the adjudication of civil and criminal cases; and

WHEREAS, approximately 85% of the costs of the operation of the state district court system is financed through the payment of local property taxes, notwithstanding the state nature of the work of those courts; and

WHEREAS, financing of the court system by local property taxes creates a disproportionate per capita tax burden for judicial services in the

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various counties of the State and may result in differing levels of judicial services in those counties; and

WHEREAS, the judicial system would benefit from unified budgeting in that such budgeting would eliminate the inequities of financing the system by local property taxes, offer a more uniform level of judicial services to the residents of each county, and relieve judges of the duties of fiscal management; and

WHEREAS, a unified court system would facilitate administrative coordination of personnel management, case scheduling, supply procurement, and the gathering and correlation of statistical information; and

WHEREAS, the United States Constitution guarantees all citizens the equal protection of the laws without reference to county residence; and

WHEREAS, 22 states now either totally or substantially finance trial court operations, and extensive material and experience exist in those states from which Montana could well benefit.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the creation of a unified court system under an appropriate judicial office, such as the Montana Supreme Court, to centralize, administer, and coordinate the functions of the district courts and such other courts as the committee considers necessary or advisable;

(2) the powers, duties, and responsibilities of such a unified court system, including the powers, duties, and responsibilities of such existing entities as the Montana Supreme Court, the Montana Supreme Court Law Library, the Office of the Supreme Court Administrator, and the clerks of the various district courts; and

(3) the alternative methods of financing a state unified court system.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 49th Legislature and, if necessary, draft legislation to implement its recommendations.

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE COAL TAX OVERSIGHT SUBCOMMITTEE EXAMINE THE IMPACTS ON STATE AND LOCAL GOVERNMENT SERVICES IN MONTANA AND NORTH DAKOTA OF THE PROPOSED TENNECO COAL GASIFICATION PLANT AT WIBAUX AND METHODS FOR COOPERATING WITH NORTH DAKOTA TO MITIGATE SUCH IMPACTS.

WHEREAS, it appears that a coal gasification plant may be constructed near Wibaux, Montana, in the near future; and

WHEREAS, construction and operation of such a coal gasification plant would create substantial impacts on state and local government services in both Montana and North Dakota; and

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WHEREAS, the North Dakota Legislature has established a committee to study the impacts on North Dakota of the Tenneco plant; and

WHEREAS, the North Dakota committee would like to cooperate with Montana in mitigating the impacts of the Tenneco plant upon the provision of state and local government services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Coal Tax Oversight Subcommittee examine the probable impacts of the Tenneco plant on state and local government services in Montana.

(2) That the Subcommittee cooperate with the committee established by the North Dakota Legislature to examine the probable impacts of the Tenneco project upon state and local government services in North Dakota.

(3) That the Subcommittee examine means by which impact mitigation on both sides of the border can be coordinated.

(4) That the Subcommittee submit its findings and recommendations to the 49th Legislature.

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF OPTIONS AND ALTERNATIVES FOR INVESTING STATE RETIREMENT FUNDS, COAL TAX TRUST FUNDS, AND OTHER CASH FUNDS; REQUIRING A REPORT OF THE STUDY FINDINGS TO THE 49TH LEGISLATURE.

WHEREAS, inflation distorts the measurement of real yields on investments; and

WHEREAS, inflation increases future commitments of state retirement funds; and

WHEREAS, inflation may result in an inability of retirement funds to fund benefits for public employees, creating pressure on the general fund; and

WHEREAS, the permanent coal tax trust fund created by Article IX, section 5, of the Montana Constitution should be maintained in true purchasing power for future Montanans; and

WHEREAS, the Montana Board of Investments manages substantial public assets benefiting public employees, the general fund, and future Montanans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That an appropriate interim committee be assigned to study options and alternatives for investing state retirement funds, coal tax trust funds, and other cash funds.

(2) That the committee compare the costs of maintaining the Board of Investments to other states' investment systems and to private sector management of trusts and similar investment pools.

(3) That the committee examine the list of permissible investments in 17-6-211 and make recommendations for expanding or amending those permitted.

(4) That the committee examine the management of Montana's investment pool and consider the effects of inflation on the pool.

(5) That the committee study the flow of funds within the several retirement systems, giving special consideration to the effects of inflation on the funds, on retirement tax rates, and on benefits.

(6) That the committee closely examine the assumptions made in actuarial studies of state retirement funds, including a review of the studies by independent professional actuaries.

(7) That the committee report its findings and recommendations to the 49th Legislature and, if necessary, draft legislation to implement the recommendations.

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE COMMISSIONER OF HIGHER EDUCATION TO DEVELOP AND EXPAND ECONOMICS PROGRAMS AND TO ENCOURAGE THE OFFERING OF MORE ECONOMICS COURSES IN MONTANA'S HIGH SCHOOLS, COLLEGES, AND UNIVERSITIES.

WHEREAS, it is important for all Montanans to understand the free enterprise system; and

WHEREAS, an understanding of the free enterprise system will lead to an understanding of the importance of jobs in the economy; and

WHEREAS, a healthy economy is important to the people of Montana; and

WHEREAS, university officials have indicated that freshmen entering Montana's colleges and universities have a lack of understanding in basic economics.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Superintendent of Public Instruction and the Commissioner of Higher Education are encouraged to develop and expand economics programs and to encourage the offering of more economics courses in Montana's high schools, colleges, and universities.

HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONSENTING TO THE CONSTRUCTION OF A SWIM CENTER AT WESTERN MONTANA COLLEGE.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, under the provisions of sections 20-25-302 and 18-2-102, MCA, and subject to the availability of funds other than the appropriated funds from regular state revenues for state operations, the Legislature consents to the capital construction program at Western Montana College, Dillon, Montana, consisting of the acquisition, construction, and equipping of a swim center estimated to cost $1,436,000. The Legislature further consents to the financing of this project by the Board of Regents of Higher Education by pledging gifts, grants, and fees and issuing bonds under 20-25-402, to be paid back by revenues from state lands pursuant to 20-25-255(2). Should the total funds become available, the funding resources will be presented to the interim Finance Committee prior to the letting of any bids for the project.

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REAFFIRMING THE STATE'S COMMITMENT TO ECONOMIC DEVELOPMENT CONSISTENT WITH RESPONSIBLE STEWARDSHIP AND ACKNOWLEDGING THE RESPONSIBILITY OF BUSINESS ENTERPRISES AND LABOR AND INDIVIDUALS TO REDUCE THE IMPACT OF CESSATION OR SUSPENSION OF INDUSTRIAL ACTIVITY.

WHEREAS, in Montana's past there was a failure to address the long-term ramifications of natural resource extractive and processing industries in a manner which would have protected future generations from the adverse effects of "boom and bust" economic cycles; and

WHEREAS, the State of Montana is committed to economic development consistent with responsible stewardship; and

WHEREAS, the commitment to economic development is exhibited in many forms, including tax laws, business attraction efforts, and laws and initiatives enacted by the legislature and voters of the state; and

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WHEREAS, in addition to and as a complement to the commitment to economic development, the State of Montana expects that business enterprises and labor doing business in Montana will recognize that the elements of modern society are bound together in an interdependent system in which the prosperity of the business enterprises and labor are complemented by the employees who contribute the human factors in the formula for success, and that both employer and worker, in association with other residents, form the community that shares and participates in the corporation's growth and that assumes an identity reflective of the corporation; and

WHEREAS, cessation or suspension of operations by a business enterprise which has been central to a community's economic activity can cause severe and often irreparable damage by interrupting all economic, social, and governmental activities; and

WHEREAS, the earnings for a lifetime of conscientious and diligent effort by employees who have devoted their working careers to the service of a business enterprise are only partial compensation for their perseverance in tasks that may be onerous and hazardous.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana and its elected officials acknowledge a responsibility to make continuing efforts to promote economic development, to provide jobs for Montanans, and to maintain a climate in Montana receptive to the healthy conduct of business, consistent with responsible stewardship of resources and service to its citizens.

BE IT FURTHER RESOLVED, that a business enterprise that has enjoyed general financial good health conducting business in Montana should not disregard its responsibility for equitable treatment of employees who have committed their lives to the business enterprise, nor should it disregard its responsibility for equitable treatment to the community in which it has operated.

BE IT FURTHER RESOLVED, that cessation or suspension of operations by a business enterprise offers the business enterprise an opportunity to acknowledge the broadened concept of socioeconomic responsibility of modern business.

BE IT FURTHER RESOLVED, that the State of Montana expects each of its citizens, whether individual or corporate, to accept and exemplify the responsibility to reduce the negative impact of cessation or suspension of business activity.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Governor of the State of Montana, the President of the Atlantic Richfield Company, the President of the Anaconda Company, and the board of directors of the Atlantic Richfield Company.

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HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING THE FEDERAL ADMINISTRATION'S PLAN TO SELL PUBLIC LANDS.

WHEREAS, the Public Land Law Review Commission, in its 1964 public land study ordered by Congress, concluded that most public lands would not best serve the public interest if they were in private ownership; and

WHEREAS, the Federal Land Policy and Management Act of 1976 and the National Forest Management Act of 1976 state that public lands will be retained in federal ownership; and

WHEREAS, the United States Secretary of Agriculture intends to propose legislation to the 98th Congress to expand his authority to sell National Forest System land; and

WHEREAS, the federal lands are a great national treasure and an important part of our heritage; and

WHEREAS, federal lands managed under multiple use represent a vast storehouse of publicly owned resources, such as fossil fuels, nonenergy minerals, rangeland, forests, wilderness, water, wildlife habitat, wildlife, fish, and many other valuable amenities and commodities; and

WHEREAS, these federal lands provide millions of hunters, fishermen, campers, picnickers, backpackers, snowmobilers, boaters, and recreational vehicle users a place to pursue recreational activities without encountering "no trespassing" signs; and

WHEREAS, retention of federal lands in federal ownership will promote access to the public lands and water for the maximum number of people for recreational and economic purposes; and

WHEREAS, federal lands are now available for use and enjoyment by all United States citizens; and

WHEREAS, public ownership of federal lands will ensure continued multiple-use management and public access to these lands; and

WHEREAS, since the sale of public lands could be made to the highest bidder, the result could be the elimination of the small rancher, timber operator, and other small commercial enterprises.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That public lands be retained in federal ownership except as provided in existing land-use planning statutes.

(2) That the 48th Legislature opposes legislation that the Federal Administration intends to propose which would permit the sale of National

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Forest System lands, excepting the sale of unmanageable, isolated parcels of land and financially burdensome, outdated, nonessential facilities.

(3) That the Secretary of State send copies of this resolution to the President of the United States and to each member of the United States Congress.

(4) That the Secretary of State send copies of this resolution to the presiding officers of the Legislatures of the states of Idaho, Wyoming, North Dakota, South Dakota, Washington, Oregon, Utah, Colorado, Nevada, New Mexico, and California.

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ENACT LEGISLATION THAT PROVIDES FOR ANNUAL BUDGET REVIEW OF THE BONNEVILLE POWER ADMINISTRATION BY THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL.

WHEREAS, the Bonneville Power Administration is a federal power marketing agency with substantial influence in the Pacific Northwest and particularly in the State of Montana; and

WHEREAS, Congress has heretofore granted the Bonneville Power Administration considerable freedom from the strictness of the authorization and budget processes; and

WHEREAS, there is a lack of sufficient independent information available about the Bonneville Power Administration's allocation of the funds it collects from the ratepayers of Montana, Idaho, Oregon, and Washington; and

WHEREAS, the Bonneville Power Administration must be more responsible to the citizens and state and local governments in the Pacific Northwest region.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is most earnestly requested to enact S.623, the bill introduced by Montana Senator Max Baucus creating the Bonneville Power Administration Regional Accountability Act of 1983, amending 16 U.S.C. 832, et seq., which provides for annual budget review by the Pacific Northwest Electric Power and Conservation Planning Council; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, Governor Ted Schwinden, and to each member of the Congress of the United States.

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HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE IMPORTANCE OF A VIABLE SUGAR INDUSTRY IN THE STATE OF MONTANA; ENCOURAGING GREAT WESTERN SUGAR COMPANY AND THE SUGAR BEET GROWERS TO RESUME BARGAINING AND REACH AN ACCEPTABLE RESOLUTION OF THEIR DIFFERENCES FOR THE BENEFIT OF ALL PARTIES, INCLUDING THE PEOPLE OF THE STATE OF MONTANA; AND REQUESTING THAT THE MONTANA DEPARTMENT OF AGRICULTURE COORDINATE THE EFFORTS OF THE STATE IN PRESERVING MONTANA'S SUGAR INDUSTRY.

WHEREAS, Montana's sugar industry is extremely important to the economic welfare of the State of Montana and its people, contributing over $46 million to the agricultural economy of the state in 1981; and

WHEREAS, sugar processing in the Billings area employs an average of 235 people a month with a payroll of $3.5 million a year; and

WHEREAS, there are 326 farms containing 29,170 acres and producing over 590,000 tons of sugar beets annually in south-central Montana, with a total production value of $23,280,500 in 1981; and

WHEREAS, the Great Western Sugar Company and Sugro (the bargaining association of the growers) are currently engaged in a difficult period of negotiations for a new contract; and

WHEREAS, the Honorable Ted Schwinden, Governor of the State of Montana, has expressed his deepest concern over the possible loss of the sugar industry in the State of Montana and the far-reaching impacts that this loss would have on the economy and people of the State of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the sugar beet growers of the State of Montana and Great Western Sugar Company are encouraged to resume negotiations and reach an acceptable resolution of their differences for the benefit of all parties, including the people of the State of Montana.

BE IT FURTHER RESOLVED, that the Montana Department of Agriculture coordinate the efforts of the Montana Legislature and other governmental agencies to preserve a viable sugar industry in Montana.

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE CLASSIFICATION, PAY, AND OTHER CONDITIONS OF EMPLOYMENT OF LEGISLATIVE EMPLOYEES.

WHEREAS, it is necessary to establish a pay plan for legislative employees that compensates those employees on a basis similar to other state employees; and

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WHEREAS, it is necessary that legislative employees know of their conditions of employment and that such conditions be uniform for the House and Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the following legislative employee positions are classified in the grades indicated and are entitled to be paid accordingly. The grades are those set forth in Executive Order No. 7-81, pay schedule for fiscal year 1983, found in the compiler's comment to section 2-18-312, MCA.

Grade 20
Chief Clerk of the House
Secretary of the Senate

Grade 16
Sergeant-at-arms

Grade 14
Chaplain

Grade 13
Assistant Chief Clerk of the House
Assistant Secretary of the Senate
Aide to the Senate Minority
Aide to the Senate President

Grade 11
Legislative Assistant
Chief Stenographer
Bills Clerk
Journal Clerk
Senate Business Manager
Assistant Sergeant-at-arms
Assistant Senate Business Manager
Secretary to the following:
President, Speaker, Secretary of the Senate, Chief Clerk, Majority Leader, and Minority Leader

Grade 10
Bills Coordinator
Assistant Chief Stenographer
Assistant Journal Clerk
Assistant Bills Clerk
Committee Secretary
Bills Distributor
Amendments Coordinator

Grade 9
Assistant Bills Coordinator
Assistant Bills Distributor
Assistant Amendments Coordinator

Grade 8
Stenographer

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Grade 7
Status Input Technician
Reading Clerk
Supply Clerk
Posting Clerk
Typist

Grade 6
Proofreader
Clerk-typist
Steno Aide

Grade 5
Parking Attendant
Doorman
Security Guard
Page Supervisor

Grade 1
Permanent Page

$3.50 an hour
Page

(2) That positions classified at Grade 16 and above are considered professional or "exempt" positions and are not subject to overtime pay. Employees in such positions must receive the salary as shown in the salary schedule, regardless of the number of hours worked.

(3) That positions classified below Grade 16 are subject to overtime pay and recorded hours of work. Hours over 40 a week worked by an employee so classified will be compensated for at the rate of 1 ½ times the employee's regular hourly wage.

(4) That an employee with no previous legislative experience must be classified at Step 2 of the appropriate grade; however, no employee may be paid less than the federal minimum wage. For each year of legislative experience, an employee must be advanced one step to determine the applicable step within the grade.

(5) That no additional benefits, such as sick leave, vacation leave, holiday pay or time off, health insurance, or longevity allowances accrue to legislative employees. In lieu of such benefits available to other state employees, legislative employees are paid an additional 14 cents an hour.

(6) That employees in grades 1 through 13 will be paid at their regular hourly rate for 8 hours for one day off during the legislative break after the transmittal deadline.

(7) That section 2-18-617(3), MCA, relating to assumption of liability for accrued vacation credits, does not apply to the Legislature.

(8) That a Chaplain be paid for 2 hours for each legislative day served.

(9) That Public Employees Retirement System benefits are available at the option of the employee if the employee pays both the employee and employer contribution.

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HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT A COMMITTEE OF LEGISLATORS BE ASSIGNED TO REVIEW THE FINAL POWER PLAN DEVELOPED BY THE PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL AND TO MAKE APPROPRIATE RECOMMENDATIONS.

WHEREAS, the development and implementation of a comprehensive electric power program is vital to Montana; and

WHEREAS, the availability and cost of electricity will shape both the future economic and environmental lifestyles of the people of Montana; and

WHEREAS, the Pacific Northwest Electric Power and Conservation Planning Council, referred to herein as the "Council", is required by P.L. 96-501 to develop a 20-year electric power plan for the Pacific Northwest, including that portion of Montana west of the Continental Divide; and

WHEREAS, Montana's appointees to the Council have played an active and significant role in the development of the 20-year power plan; and

WHEREAS, the Council has adopted the goal of planning to provide a supply of electricity adequate to sustain a vigorous and growing economy and a healthy environment at the lowest total cost; and

WHEREAS, the Council has provided the public an unprecedented access to and participation in its decisions; and

WHEREAS, the Council has requested the appointment of a committee of Montana Legislators to review the 20-year plan and has offered to pay the expenses of the committee.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the President of the Senate appoint four members of the Senate and the Speaker of the House appoint four members of the House, on an equally bipartisan basis, to serve on a committee funded by the Council to meet during the interim between legislative sessions.

(2) That the committee meet with Montana's representatives on the Council to review the final power plan and existing state law.

(3) That the committee submit to the 49th Legislature a report of its findings, together with its recommendations for legislation, if any, necessary and desirable to implement the power plan in the State of Montana.

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HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ASSIGNMENT OF A SELECT COMMITTEE ON INDIAN AFFAIRS.

WHEREAS, there are seven Indian reservations and numerous landless Indians in Montana; and

WHEREAS, the various tribes have treaties with the United States that are subject to continual interpretation; and

WHEREAS, extremely complex jurisdictional, social, political, and philosophical questions arise in virtually all subject areas, including law enforcement, pollution control, natural resources, game management, health, social services, education, and taxation, which in turn produce tension and conflict in tribal/state and Indian/non-Indian relations; and

WHEREAS, Congress, as the ultimate authority on relations with the Indian tribes, has not been able to act in a decisive manner to resolve these questions and is unlikely to do so in the foreseeable future; and

WHEREAS, jurisdictional litigation on a case-by-case basis is expensive to the state, tribes, and private parties; and

WHEREAS, the jurisdictional, social, and philosophical problems between Indians and non-Indians are historical and cannot be expected to dissipate quickly; and

WHEREAS, the non-Indian people of Montana find it is to their benefit to have a cooperative and communicative liaison with the Indian people in Montana; and

WHEREAS, the Indian people in Montana have indicated it is also to their benefit to have a legislative committee with which to maintain such a cooperative and communicative liaison.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the President of the Senate and the Speaker of the House appoint four members of the Senate and four members of the House, equally bipartisan, to serve on a select legislative committee on Indian affairs.

(2) That the committee, at its initial, organizational meeting, decide specific topics of study to pursue.

(3) That the committee seek opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies to gain insight into Indian/non-Indian relations.

(4) That the committee hold hearings to promote better understanding between the tribes and public agencies and to improve the Indian peoples' knowledge of the structure of state agencies and the legislative process.

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(5) That the committee encourage and foster participation of Indian people at its meetings.

(6) That the committee act as an available liaison between the Indian people and the Legislature.

(7) That the committee encourage tribal/state and tribal/local government cooperation and otherwise promote amicable Indian/non-Indian relations.

(8) That the committee keep informed of cooperative agreements being negotiated and entered into through the mechanism provided for in Title 18, chapter 11, MCA, or otherwise.

(9) That the Legislative Council provide staff to assist the committee.

(10) That the committee report its activities, findings, and recommendations and any proposed legislation to the 49th Legislature.

HOUSE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REVIEW THE RULES ADOPTED UNDER THE MONTANA SANITATION IN SUBDIVISIONS LAW; REQUESTING THE DEPARTMENT TO AMEND OR REPEAL THOSE RULES WHICH ARE NOT CONSISTENT WITH THE PURPOSES OF THAT ACT; REQUESTING THE DEPARTMENT TO ADOPT RULES TO MINIMIZE THE COST OF REVIEW OF SUBDIVISION PROPOSALS; AND REQUESTING THE REVIEW OF RULES TO BE COMPLETED BY JULY 1, 1984.

WHEREAS, the Subdivision Bureau of the Department of Health and Environmental Sciences has been eliminated, resulting in a reduced number of development lots reviewed; and

WHEREAS, the subdivision review function has been placed under the supervision of the Water Quality Bureau; and

WHEREAS, in a memorandum written December 27, 1982, by the Water Quality Bureau, it was stated that the rules implementing sanitation provisions in the Montana Sanitation in Subdivisions Law are confusing and difficult to administer; and

WHEREAS, it is the expressed desire of the Water Quality Bureau to review the existing rules at the adjournment of the 48th Legislature; and

WHEREAS, some of the existing rules are believed to be duplicative and burdensome and many of the local governing bodies reviewing subdivision proposals do not possess the expert personnel or procedures or the desire to properly analyze or use the information contained in a subdivision proposal; and

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WHEREAS, excessive review and administrative processes result in unnecessary costs to the public; and

WHEREAS, existing rules go beyond the scope and intent of the Montana Sanitation in Subdivisions Law.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Health and Environmental Sciences is requested to review its rules to determine whether they are consistent with the principles and goals of sanitation in the Montana Sanitation in Subdivisions Law (Title 76, chapter 4, part 1); to amend or repeal those that are not; and to conduct that review, amendment, and repeal process in accordance with the Montana Administrative Procedure Act, involving hearings and the participation of the public.

BE IT FURTHER RESOLVED, that:

(1) the adoption of new and amended rules should be limited to those rules falling within the purpose of the Act to promote health and safety;

(2) rules should be adopted which minimize the time, documentation, and cost involved in the review process while preserving and protecting the public health and safety;

(3) the purpose of the review of the rules should be to ease the burden on all parties involved in the review process; and

(4) the review, amendment, repeal, and adoption of the rules should begin on passage of this resolution and should be completed by July 1, 1984.

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO AMEND THE BANKRUPTCY LAWS TO MAKE IT MORE DIFFICULT FOR INDIVIDUALS TO DISCHARGE STUDENT LOAN DEBTS IN A BANKRUPTCY PROCEEDING.

WHEREAS, student loan programs, whether federal, state, or private, have an important role in making quality education available to students from all economic classes; and

WHEREAS, the economic and social welfare of the state and the nation is strongly dependent upon the ability of the country to educate its citizens, regardless of their economic or social conditions; and

WHEREAS, the growing number of bankruptcies that result in the discharge of student loans have harmed the student loan programs by reducing the amount of funds available for loans and by reducing the public esteem of such programs; and

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WHEREAS, control of the provisions of the bankruptcy laws is vested in the federal government.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is urged to amend the bankruptcy laws of the United States to make it more difficult for individuals to discharge student loans in bankruptcy proceedings while still preserving the flexibility necessary to permit those without present or foreseeable future repayment ability to obtain a discharge. To meet this objective, the following changes in the bankruptcy laws are advocated:

(1) Amend Section 523(a)(8)(A) of the Bankruptcy Reform Act to provide for a 10-year period of nondischargeability.

(2) Amend Section 523(a)(8)(B) of the Bankruptcy Reform Act to define undue hardship, incorporating the three-tiered analysis of In Re Johnson, 5 B.C.D. 532 (1979) and In Re Lezer, 21 B.R. 783 (1982).

(3) Amend Section 1325(a)(3) of the Bankruptcy Reform Act to clarify that the term "good faith" refers to both the debtor's ability to pay and the debtor's use of a Chapter 13 proceeding to avoid the nondischargeability provisions of Chapter 7 without providing for substantial repayment of the student loan debt.

(4) Amend Section 1328(a)(2) of the Bankruptcy Reform Act to add debts provided for under Section 523(a)(8) as exceptions to discharge under Chapter 13.

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO AMEND THE BANKRUPTCY LAWS TO PERMIT AN INSTITUTION OF HIGHER EDUCATION TO WITHHOLD RELEASE OF A TRANSCRIPT TO A STUDENT LOAN DEBTOR UNTIL THE STUDENT LOAN IS DECLARED DISCHARGED.

WHEREAS, student loan programs play an essential role in making educational opportunities available to all persons; and

WHEREAS, the integrity of the student loan programs is based in great measure upon the ability of the institutions of higher learning to collect student loan debts; and

WHEREAS, a major tool in the collection of debts is the ability of the school to withhold release of transcripts to debtors; and

WHEREAS, the present bankruptcy statutes have been interpreted by the courts to require schools to furnish transcripts simply by virtue of the debtor filing a petition in bankruptcy.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is urged to amend the bankruptcy laws of the United States to permit an institutional creditor to withhold release of a transcript to a student loan debtor until such time as the student loan is declared discharged. To meet this objective, the following changes in the bankruptcy laws are advocated:

(1) Amend Section 362(b) of the Bankruptcy Reform Act to add a new subsection (9) that provides: "under subsection (a) of this section, of the right of an educational institutional creditor to withhold release of the transcript of a student loan debtor until such time as the student loan debt is declared discharged by the bankruptcy court or other court of competent jurisdiction."

(2) Amend Section 525 of the Bankruptcy Reform Act to clarify that this section is not violated by the refusal of a state school to provide a transcript to a student loan debtor unless the debt has been declared discharged.

(3) Amend Section 1301 of the Bankruptcy Reform Act to add an additional exception subsection (d) to permit an educational institutional creditor to withhold the transcript of a student loan debtor until such time as the debt is discharged pursuant to Section 1328 of the Bankruptcy Reform Act.

HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEVELOPMENT OF COMMUNITY-BASED CORRECTIONS.

WHEREAS, the Constitution of the State of Montana states that law for the punishment of crime shall be founded on the principle of prevention and reformation; and

WHEREAS, a correctional program should be the least restrictive measure consistent with the needs of the offender and the safety of the public and

WHEREAS, the public is protected by a correctional system characterized by concern, diversified programs for individuals, and reintegration concepts as well as punitive measures; and

WHEREAS, a prerelease center, which is a community-based residential facility for selected inmates who are nearing parole or discharge, is a placement alternative that is of value both to society as a whole and to the individuals involved because the centers provide those individuals with opportunities to obtain or engage in work experience, life skills training, educational pursuits, and other legitimate community activities that help inmates make the transition from correctional programs to the community at the time of their release; and

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WHEREAS, community corrections programs are desirable for reasons of economy and humanity, and the State supervises approximately 2,434 probationers and parolees in the community at the present time; and

WHEREAS, Montana State Prison is currently the sole residential sentencing alternative available to the courts for male inmates; and

WHEREAS, the Legislature recognizes its responsibility to provide opportunities for the rehabilitation, reformation, and training of inmates in order to reduce recidivism and release prisoners as productive members of society.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Institutions is urged to aggressively promote the further development of community-based corrections and prerelease centers.

BE IT FURTHER RESOLVED, that local governments are urged to cooperate in facilitating the development of community-based corrections and to consider zoning classifications that will permit greater latitude in finding locations for prerelease centers.

BE IT FURTHER RESOLVED, that concerned Montanans interested in community corrections further recognize their responsibility to create solutions to the social issue of crime, an issue that has immediate impacts on the community as a whole from both the local and state perspectives.

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ADOPT RULES LIMITING AMENDMENTS TO BILLS TO THE SUBJECT MATTER REFLECTED IN THE TITLE OF THE BILL.

WHEREAS, Article V, section 11, of the Montana Constitution states that a bill may not be so altered or amended on its passage through the Legislature as to change its original purpose and that, generally, a bill may contain only one subject, clearly expressed in its title; and

WHEREAS, Montana citizens are dismayed and dissatisfied with the practice of the United States Congress of attaching amendments that are unrelated to the original bill; and

WHEREAS, Montana citizens find it difficult and sometimes impossible to track unrelated issues attached as amendments to bills moving through the legislative process in the United States Congress.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Legislature urges the United States Congress to adopt a joint rule prohibiting amending or altering any bill on its passage through the Congress in such a manner as to change its original purpose.

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(2) That the Montana Legislature also urges the United States Congress to adopt a joint rule that each bill, except general appropriations bills and bills for the general revision of laws, must contain only one subject, clearly expressed in the title of the bill, and that if any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(3) That the Secretary of State shall send copies of this resolution to Montana's Congressional Delegation.

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO FULLY FUND SALINE SEEP AND OTHER RESEARCH BY THE NORTHERN PLAINS SOIL AND WATER RESEARCH CENTER.

WHEREAS, the Northern Plains Soil and Water Research Center is the only United States Department of Agriculture research service center in the United States that conducts research in saline seep and the methods of combating this problem; and

WHEREAS, saline seep has removed more than 610,000 acres of cropland from production in Montana, North Dakota, South Dakota, Texas, Oklahoma, and Wyoming and 500,000 acres of cropland in the Canadian Provinces of Manitoba, Saskatchewan, and Alberta; and

WHEREAS, saline seep continues to annually remove more than 60,000 acres of cropland from production in the United States and 28,000 acres in Montana alone; and

WHEREAS, in 1981 the six states of Montana, North Dakota, South Dakota, Texas, Oklahoma, and Wyoming produced more than $2,312,800,000 worth of grain that was sold in foreign markets, which sales positively affected this country's balance of payments; and

WHEREAS, the average annual loss of revenue to American farmers, combined with the average annual trade deficit caused by saline seep, exceeds $62 million; and

WHEREAS, the Northern Plains Soil and Water Research Center is the only United States Department of Agriculture, Agricultural Research Service, center in the country uniquely suited to conduct spring and winter wheat remote sensing research in conjunction with the National Aeronautics and Space Administration; and

WHEREAS, remote sensing is vital to the worldwide satellite work of crop screening, small grain analysis, and crop production analysis; and

WHEREAS, the Northern Plains Soil and Water Research Center coordinates its research closely with state agricultural research programs, especially those programs in Montana and North Dakota; and

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WHEREAS, the United States Office of Management and Budget has recommended that the Agricultural Research Service receive an increase in its budget, but the funds currently used to operate the Northern Plains Soil and Water Research Center are scheduled to be shifted to other projects in Maine, North Dakota, and Colorado; and

WHEREAS, the Office of Management and Budget is recommending that saline seep research at the federal level cease if the Northern Plains Soil and Water Research Center is closed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Secretary of Agriculture and the United States Congress are urged to fully fund the Northern Plains Soil and Water Research Center in order to continue its highly important work of remote sensing and saline seep research, so critical to the farm economy of this State.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Secretary of Agriculture and to the Agriculture Committees of the United States Congress.

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE INSURANCE LAWS OF THE STATE OF MONTANA AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 49TH LEGISLATURE.

WHEREAS, numerous bills pertaining to insurance have been introduced in the 48th Legislature; and

WHEREAS, the area of insurance law is complex and cannot be adequately considered by the Legislature during the time constraints of a legislative session; and

WHEREAS, the Legislature is again faced with finding a solution to problems caused by evasion of the mandatory motor vehicle liability insurance law; and

WHEREAS, the issue of the existence of sex discrimination in the insurance industry merits legislative attention because discrimination in commerce is forbidden by the Equal Dignities Clause of the Montana Constitution; and

WHEREAS, the Legislature desires to eliminate, in a manner that is fair both to the consumer and the insurer, distinctions in the insurance industry that are based upon sex and wishes to determine how this distinction can be eliminated in an equitable manner; and

WHEREAS, the Legislature has received conflicting information on the long-term effects of elimination of these distinctions; and

WHEREAS, the Legislature may not be able to anticipate and resolve or mitigate any potential adverse effects of such legislation; and

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WHEREAS, the issue of the existence of economic inequities in motor vehicle liability coverage merits legislative attention because motor vehicle liability coverage is compulsory under Montana law; and

WHEREAS, the fairness and adequacy of insurance coverage made available by the insurance industry in Montana must be considered.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the marketing practices of the insurance industry and the insurance laws of the State of Montana. The study must consider all aspects of insurance, including but not limited to an examination of:

(1) alternative mechanisms to enforce the mandatory motor vehicle liability coverage law;

(2) the difference, if any, in the scope, coverage, terms, rates, and benefits offered to consumers in all areas of the insurance industry on the basis of their sex;

(3) the current availability in Montana of motor vehicle liability coverage of operators in addition to or instead of coverage of the vehicles they operate;

(4) the alternatives, benefits, liabilities, and time reasonably necessary to implement:

(a) a requirement that in the marketing of insurance there be no distinction made based on the insured's sex; and

(b) a requirement that motor vehicle liability insurance coverage be made available to an operator without regard to motor vehicles that he owns or operates;

(5) the results in any other jurisdiction of imposition of either of the requirements set forth in subsection (4); and

(6) any other selected insurance issues which the committee considers pertinent and timely.

BE IT FURTHER RESOLVED, that the committee report the findings of the study, including findings specifically related to (1) through (5), to the 49th Legislature and, if necessary, draft legislation to implement its recommendations.

HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT STATE EXECUTIVE, JUDICIAL, AND LEGISLATIVE AGENCIES, LOCAL GOVERNMENTS, AND THE MONTANA UNIVERSITY SYSTEM GIVE PREFERENCE TO MONTANA CITIZENS IN FILLING STATE, LOCAL GOVERNMENT, AND UNIVERSITY SYSTEM POSITIONS.

WHEREAS, in a time of economic hardship, Montana has a certain responsibility to its citizens to provide jobs to those citizens first and to retain their skills and knowledge of the state within Montana; and

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WHEREAS, in this time of economic hardship there are many Montanans qualified to work in all areas of state and local government and the Montana university system; and

WHEREAS, Montanans have a good understanding of the government, business, recreational, agricultural, and ranching world in Montana and understand the related economic, political, and social problems; and

WHEREAS, many qualified Montanans would like to continue to live in this state, raise their families in this state, and enjoy the amenities of this state; and

WHEREAS, even in this time of economic hardship, there are positions within state and local government and the Montana university system which must be filled for a variety of reasons; and

WHEREAS, qualified Montanans hoping to stay in the state, with their valuable knowledge of the state, would be less likely than nonresidents to use a state or local government position or a position within the university system as a steppingstone for other work or as an entry position for private business in the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That whenever possible Montana citizens be given preference in the selection of applicants for filling positions in all branches of state and local government and the Montana university system.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Governor; to the head of each state executive, judicial, and legislative branch agency; to the governing body of each political subdivision; and to the president of each unit of the Montana university system.

HOUSE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE REVENUE OVERSIGHT COMMITTEE CONDUCT A COMPREHENSIVE STUDY OF THE PROPERTY TAX CLASSIFICATION SYSTEM AND EQUALIZATION WITHIN THE CLASSES OF PROPERTY IN THE STATE OF MONTANA.

WHEREAS, the property tax is a vital element in the taxation system in the State of Montana; and

WHEREAS, Montana's property tax classification system contains 11 separate classes of property that are assessed and taxed at different rates; and

WHEREAS, several actions by the United States Congress, particularly those relating to railroads and airlines, have raised legal questions about the operation of the property tax classification system in Montana; and

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WHEREAS, there is an urgent need to study and resolve legal, administrative, and equity issues related to the property tax classification system and equalization within the classes of property used in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Revenue Oversight Committee is requested to study the property tax classification system and equalization within the classes of property in Montana and to include in its study an examination of legal, administrative, and equity issues related to the classification system.

(2) That the Legislature provide funding so that the Revenue Oversight Committee may adequately staff this study with at least one full-time staff person, if necessary, and seek appropriate expert consultants to accomplish the purposes of the study.

(3) That the Revenue Oversight Committee report its findings and recommendations and any proposed legislation to the 49th Legislature.

HOUSE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CLASSIFICATION, EVALUATION, AND ASSESSMENT OF AGRICULTURAL LAND FOR TAX PURPOSES, THE LAWS AND EXISTING AND PROPOSED ADMINISTRATIVE RULES RELATING THERETO, AND THE EXISTING AND PROPOSED TAX COMPUTATION METHODS; REQUIRING A WRITTEN REPORT OF THE STUDY TO THE 49TH LEGISLATURE.

WHEREAS, the Montana Constitution requires equality throughout the state in the assessed valuation of property for tax purposes; and

WHEREAS, the Montana Code Annotated provides that agricultural land is taxed at 30% of its productive capacity, that agricultural lands are to be uniformly classified to secure an equitable and uniform basis of assessment of such lands and must be classified and appraised as agricultural lands without regard to the highest and best use of neighboring lands, and that the Legislature intends agricultural lands to be classified and assessed at a value that is exclusive of values attributed to speculative purposes; and

WHEREAS, the Department of Revenue has drafted and proposes to adopt a new set of rules for the classification, valuation, and assessment of agricultural lands for tax purposes, which rules are substantially different than the current rules, particularly with regard to irrigated tillable land; and

WHEREAS, the Department's proposed new rules are such a departure from the current rules that their application would result in a considerable disruption of the tax status and financial situation of many of the farmers and ranchers of this state; and

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WHEREAS, agriculture is Montana's major industry, and its products, particularly grains, are sold throughout the world and have an effect on the national economy and balance of payments as well as the economy of Montana; and

WHEREAS, the Department's proposed new rules have raised concern among many members of the agricultural community; and

WHEREAS, the House Committee on Agriculture, Livestock and Irrigation has reviewed the statutes and current and proposed rules relating to the classification and assessment of agricultural lands for tax purposes and believes it to be essential that they be the subject of an interim study.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be chosen and assigned to study:

(1) the provisions of the Montana Code Annotated relating to the classification, valuation, and assessment of agricultural lands for tax purposes;

(2) the Department of Revenue's current and proposed rules for the classification, valuation, and assessment of agricultural lands for tax purposes;

(3) the method and means by which the Department arrived at its proposed rules and alternative methods and means that could have been used;

(4) the reaction of the agricultural industry to the proposed rules and the industry's views regarding the proposed rules and changes in them;

(5) possible changes in the proposed rules that would result in increased compliance of the rules with constitutional and statutory mandates and the financial situation of Montana farmers and ranchers;

(6) formulas and factors that may be used in the classification, valuation, and assessment of agricultural lands for tax purposes; the effect on taxes and other results of the use of the various formulas and factors; and which formulas and factors are the most appropriate;

(7) the opinions of farmers and ranchers, agricultural economists, the Departments of Revenue, Agriculture, and Livestock, and other experts relating to the classification, valuation, and assessment of agricultural lands for tax purposes;

(8) whether agricultural lands should be classified, valued, and assessed solely in accord with statutes or in accord with a combination of statutes and administrative rules and which person, persons, or entity should carry out the classification, valuation, and assessment; and

(9) any other appropriate matters relating to the resolution of problems detected in studying and determining the matters set forth in subsections (1) through (8).

BE IT FURTHER RESOLVED, that the interim committee provide an outline and time frame for its study, schedule meetings of the committee,

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and provide the 49th Legislature with a written report of its study, findings, and conclusions and with any drafts of legislation and rules that may be necessary to implement the committee's findings.

HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO IDENTIFY AND PROVIDE FOR PRESERVATION OF THE RIGHTS OF LANDOWNERS ADJACENT TO PUBLIC LAND AND WATERWAYS AND TO IDENTIFY AND PROVIDE FOR RIGHTS OF THE PUBLIC TO ACCESS AND USE PUBLIC LAND AND WATERWAYS; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, the right of the public to use waterways for recreational and other purposes and the related issue of navigability are unsettled in law; and

WHEREAS, ownership rights in land underlying waterways and rights of adjacent landowners to place obstacles in waterways or to restrict use of streambanks are also unsettled; and

WHEREAS, the right of the public to use public land is being inhibited by restrictions of access across private adjoining land; and

WHEREAS, there is an increasing number of disputes between private landowners and public users concerning the use of public land and waterways; and

WHEREAS, both the adjacent private landowners and the public have substantial interests involved in the resolution of these conflicts.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study ways to identify and preserve rights of landowners adjacent to public land and waterways and to identify and provide for rights of the public to access and use public land and waterways. The study committee shall cooperate with all interested persons to the fullest extent possible to:

(1) identify possible methods of acquiring and maintaining access across private land to public land and waterways;

(2) clarify the right of the public to use waterways, including:

(a) identification of waterways that may be used by the public;

(b) further legislative definition of navigability, if necessary;

(c) clarification of when a prescriptive use or easement may exist; and

(d) use of adjacent uplands in conjunction with the right to use the waterway;

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(3) identify use rights and title interests of adjacent landowners in land under and adjacent to waterways, including:

(a) the right to place fences, bridges, flumes, or other obstacles in the waterway;

(b) consequent taxation liabilities; and

(c) mineral rights;

(4) establish the liabilities of landowners for impeding the right of the public to use public land or waterways and the liabilities of public users with respect to violations of rights of adjacent landowners; and

(5) determine appropriate methods of enforcement.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations to the 49th Legislature.

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE HOPE FOR LASTING FRIENDSHIP, UNDERSTANDING, AND COMMUNICATION WITH THE PEOPLE OF THE KUMAMOTO PREFECTURE.

WHEREAS, the Japanese Prefecture of Kumamoto and the State of Montana became sister states on July 22, 1982; and

WHEREAS, the sister state relationship will promote communication between the people of Montana and Kumamoto; and

WHEREAS, increased interest in communication between the people of Montana and Kumamoto will further mutual understanding and the promotion of friendship; and

WHEREAS, the institutions of higher education in Montana and Kumamoto are developing student and faculty exchanges and educational programs which will increase mutual understanding; and

WHEREAS, Kumamoto and Montana have much in common, including beautiful mountain scenery, an extensive tourist industry, forest products industry, and cattle industry; and

WHEREAS, Kumamoto and Montana are likewise lands of fascinating contrasts, such as Kumamoto's ancient culture built upon the shore of the Yatsushiro Sea contrasted with Montana's pioneer settlement built upon the backbone of the American continent; and

WHEREAS, the people of Montana desire to share in the opportunity to learn more about the similarities and differences between Montana and Kumamoto.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Legislature sends its warm regards to the people of Kumamoto Prefecture.

BE IT FURTHER RESOLVED, that the Legislature wholeheartedly endorses the sister state relationship established with Kumamoto Prefecture.

BE IT FURTHER RESOLVED, that the Legislature also endorses cooperation between the institutions of higher education in Montana and Kumamoto.

BE IT FURTHER RESOLVED, that the Legislature hopes these relationships will foster lasting friendship, understanding, and communication between the people of Kumamoto and the people of Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send an original copy of this resolution to the Honorable Shigehisa Yagi, Chairman of the Prefectural Assembly of Kumamoto Prefecture, with a request that he bring these sentiments to the attention of the Assembly, Governor Morihiro Hosokawa, and the people of Kumamoto.

HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE MANAGEMENT OF THE STATE LANDS RESOURCES, PARTICULARLY STATE FOREST RESOURCES.

WHEREAS, state lands represent a tremendous asset to the State; and

WHEREAS, state lands bring in millions of dollars in support of the State's schools each year; and

WHEREAS, the law requires the state lands to be administered to secure the largest measure of legitimate and reasonable advantage to the State; and

WHEREAS, there are questions as to whether the State's forest resources are being managed so as to provide the maximum return under the sustained yield concept.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the administration of the state lands, with particular emphasis on the management of forest resources.

BE IT FURTHER RESOLVED, that the study address:

(1) the costs of management of lands in relation to the return to the State;

(2) whether lands are being managed so as to provide the best long-term benefit to the State; and

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(3) the problem of costs of fire protection on the forest lands of the State, particularly those protected by the United States.

BE IT FURTHER RESOLVED, that the committee seek out and consult with private land managers, the Department of State Lands, and other interested parties with expertise in the management of comparable private lands.

BE IT FURTHER RESOLVED, that the committee submit its report and recommendations to the 49th Legislature.

HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF MONTANA'S EMPLOYMENT PREFERENCE LAWS CONCERNING VETERANS, VETERANS' SPOUSES AND DEPENDENTS, AND DISABLED CIVILIANS; AND REQUIRING A REPORT OF THE FINDINGS AND RECOMMENDATIONS OF THE STUDY TO THE 49TH LEGISLATURE.

WHEREAS, Montana's employment preference laws for veterans, veterans' spouses and dependents, and disabled civilians, contained in Title 10, chapter 2, part 2, originally were enacted for veterans in 1921 and were amended to include disabled civilians in 1927; and

WHEREAS, the preference laws have historically been interpreted to entitle tie-breaking preference in initial employment to veterans, veterans' spouses and dependents, and disabled civilians, but in the recent case of Crabtree v. Montana State Library, a state District Court interpreted the laws as entitling minimally qualified veterans, veterans' spouses and dependents, and disabled civilians to employment preference over all others; and

WHEREAS, the preference laws are extremely ambiguous, lacking adequate definitions with regard both to the individuals covered and to procedures for implementing the preference; and

WHEREAS, the preference granted under these laws has historically been administered inconsistently; and

WHEREAS, Montana's public policy with regard to veterans, veterans' spouses and dependents, and disabled civilians is of great significance to all Montanans; and

WHEREAS, the 48th Legislature considered House Bill No. 378, Senate Bill No. 197, and Senate Bill No. 377, all of which pertain to this subject, and was unable to reach a consensus regarding the policy direction that must be taken, largely because the subject is highly emotional and controversial and requires decisions to be made involving the competing interests of many groups, all of which are vital to Montana's well-being; and

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WHEREAS, although the various interest groups also were unable to reach a consensus regarding the policy direction that must be taken, they did agree prior to the 48th Legislative Session on the need for clarification of the preference and procedures for administering it.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study Montana's employment preference laws for veterans, veterans' spouses and dependents, and disabled civilians and to address the following issues:

(1) what ambiguities or omissions exist in the current statutory language;

(2) whether the preference should be used as a tie breaker between equally qualified applicants or as an entitlement for minimally qualified veterans, veterans' spouses and dependents, and disabled civilians;

(3) whether the preference conflicts with the constitutional and statutory rights of other groups of citizens or conflicts with the obligations of employment relations contained in collective bargaining agreements;

(4) the purpose the preference laws are intended to serve and other possible means for serving similar purposes, including providing positive recognition to veterans, veterans' spouses and dependents, and disabled civilians;

(5) the extent to which preference should be applied, including whether application of the preference should be expanded or narrowed with regard to the individuals or employers covered or in duration of eligibility; whether preference should be applied equally or prioritized among the individuals covered; and whether the individuals covered should have obligations to make their preference known and determine their eligibility for preference;

(6) the status of similar preference laws in other states;

(7) the history of the implementation of Montana's laws in state, county, city, university, and other applicable government agencies; and

(8) any other issues the committee considers to be relevant.

BE IT FURTHER RESOLVED, that in its study the committee work with and seek input from representatives of all levels of government, veterans' organizations, organizations protecting the rights of the handicapped, women's organizations, and any other interested persons or groups.

BE IT FURTHER RESOLVED, that the committee make recommendations for improving the existing preference laws and report these and any other findings to the 49th Legislature.

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HOUSE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF SCHOOL TEACHER TENURE LAWS AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, there have been several bills introduced in the 47th and 48th Legislatures to modify present law regarding teacher tenure; and

WHEREAS, there is at the present time a recognition among legislators, teachers, administrators, and school district trustees in the state that this is an appropriate time for a comprehensive examination of teacher tenure laws; and

WHEREAS, the present laws on teacher tenure in some respects fail to harmonize with actual fiscal restraints and conditions of school districts and with collective bargaining practices and may in some instances be applied inequitably, causing hardship to some teachers and granting unwarranted job security to others; and

WHEREAS, as was demonstrated during hearings on teacher tenure bills introduced in the current session, the subject is complex and controversial in nature and thus was not amenable to a solution during the session; and

WHEREAS, because alterations in existing tenure law could have significant and long lasting personal and fiscal effects on both teachers and school districts, there is a real need to study teacher tenure through exhaustive public hearings and deliberations that would lead to proposed laws governing the employer-employee relationship in Montana's public schools that represent an equitable accommodation among all concerned.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study present teacher tenure laws, specifically examining:

(a) the present system of requiring a certain term of years for tenure qualification;

(b) the substantive and procedural scope of teacher tenure provisions and the advantages and disadvantages to teachers, school districts, and the community;

(c) the fiscal restraints, uncertainties, and timetables that affect school districts in the application of tenure laws;

(d) collective bargaining practices related to tenure; and

(e) inequities in present tenure laws that may cause hardship to individual teachers, school districts, administrators, and to the community at large.

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(2) That the committee is urged to study and carefully consider due process and collective bargaining alternatives to present teacher tenure laws.

(3) That the committee report its findings to the 49th Legislature together with recommendations for legislation, if any, necessary to implement such findings.

HOUSE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXPLORE MECHANISMS OR PROCEDURES TO ASSIST THE LEGISLATURE IN DECISIONMAKING CONCERNING PUBLIC EMPLOYEE RETIREMENT SYSTEMS AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 49TH LEGISLATURE.

WHEREAS, the state administers nine public employee retirement systems ranging in size from 37,063 to 60 members; and

WHEREAS, the total assets of these state-administered retirement systems exceeds $675,000,000; and

WHEREAS, numerous locally administered public pension plans exist for which the state defines the basic structure of the plans and controls the resources available to local governments to finance the plans; and

WHEREAS, little uniformity exists among the maze of public pension plans in such areas as contribution rates, benefit levels, cost-of-living adjustments, and eligibility requirements; and

WHEREAS, financing of public pension plans consumes increasing portions of state and local budgets; and

WHEREAS, a multitude of legislation is introduced each session concerning enhancement of pension benefits, revisions in employee and employer contribution rates, options for investment of retirement funds, and other pension topics; and

WHEREAS, many of these proposals require long-range fiscal commitments and obligations at both the state and local level; and

WHEREAS, in the past, Legislatures have approved benefit liberalizations without adequately funding these changes, resulting in the actuarial unsoundness of some retirement funds; and

WHEREAS, to remedy past mistakes and to avoid future errors, a mechanism or procedure is needed to assist the Legislature in acting responsibly when confronted with decisions concerning public employee retirement plans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That an appropriate interim committee be assigned to study mechanisms or procedures to permit the Legislature to:

(a) monitor and oversee the administration of public employee retirement systems, excluding the teachers' retirement system;

(b) develop an expertise in the field of public pensions;

(c) adopt a comprehensive and consistent pension policy for the State of Montana; and

(d) review proposed legislation concerning public employee retirement systems between legislative sessions.

(2) That the committee include in its study a consideration of creating a permanent legislative oversight committee on public pension plans.

(3) That the committee report its findings and recommendations to the 49th Legislature and, if necessary, draft legislation to implement its recommendations.

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO CLARIFY THE ROLE OF COMMUNITY COLLEGES IN THE PUBLIC EDUCATION SYSTEM OF THE STATE OF MONTANA.

WHEREAS, community colleges serve the citizens of Montana in educational and occupational programs; and

WHEREAS, community colleges are under a dual regulatory authority composed of district trustees and the Board of Regents; and

WHEREAS, the relationship of community colleges to the Montana University System is not clearly defined in statute; and

WHEREAS, it is essential to the overall structure of public education in Montana that a statewide plan is developed that clearly sets forth the need for community colleges and that clearly defines the role and relationship of such institutions to the larger system; and

WHEREAS, community colleges are unlikely to have a clear place within the educational system until the State has defined a comprehensive statewide plan for establishment and maintenance of such institutions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study the role, scope, and function of community colleges within the public education system of the State of Montana.

(2) That the committee include in its study a consideration of at least the following:

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(a) the structure of governance of the community colleges;

(b) the funding structure of community colleges to determine the appropriate and necessary levels of state and federal support, inclusive of student fees and tuition;

(c) the facility needs and methods for financing necessary facilities;

(d) the organizational structure of each community college to determine administrative, support, and instructional personnel necessary to carry forth the scope and sequence of program offerings; and

(e) the integral relationship of the community colleges to other state agencies and institutions funded by state, local, and federal funds in an effort to promote articulation and reduce or prevent unnecessary duplication of programs.

(3) That the committee submit to the 49th Legislature a report of its findings and recommendations.

HOUSE JOINT RESOLUTION NO. 47

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN INTERIM STUDY BE CONDUCTED TO EXAMINE THE STATUS OF MONTANA-CANADIAN RELATIONS AND PROVIDE RECOMMENDATIONS ON HOW STATE GOVERNMENT CAN BECOME BETTER EQUIPPED TO DEAL WITH BORDER ISSUES.

WHEREAS, Montana is the only American state that shares an international border with three Canadian provinces; and

WHEREAS, Montana has already experienced expensive and time-consuming border relations problems with British Columbia and Saskatchewan in particular and there are threats of future disagreements over water with Alberta; and

WHEREAS, Montana and the Canadian provinces also have great opportunity to obtain mutual benefits in areas such as telecommunications, trade, and tourist promotion; and

WHEREAS, the Montana economy is in direct competition with western provincial economies in the search for export markets which are an important ingredient in the critical task of building the Montana economy; and

WHEREAS, Montana is at a severe disadvantage in dealing with its border neighbors because it currently has no mechanism for the coordinated management of the diverse and growing Canadian border relations, while the provinces all have well-established departments for the conduct of such business; and

WHEREAS, the importance and frequency of Canadian relations are bound to grow because of the westward shift of the Canadian economic base.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Montana undertake a study of its border relationship with Canada and neighboring Canadian provinces and recommend options to the 49th Legislature for it to consider in order to produce the optimal method of promoting positive relations and avoiding future problems with Canada.

(2) That the 49th Parallel Institute at Montana State University seek funding sources for this study in the amount of $10,000 and that the study be contingent on this funding.

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules are adopted:

CHAPTER 1
Presiding Officer — Decorum, Order, and Debate

S1-1. The senate shall choose a president from its membership who shall be the presiding officer. In case of the absence or disqualification of the president, the president pro tempore of the senate shall perform the duties of the president until the vacancy is filled or the disability removed.

S1-2. The senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The senate shall choose its other officers and shall be the judge of the elections, returns, and qualifications of its members.

S1-3. The president and president pro tempore, when acting as presiding officer of the senate, shall vote as any other member of the senate.

S1-4. The president may name a senator to perform the duties of the chair when the president pro tempore is not present in the senate chamber. The senator who is so named is vested during such time with all the powers of the president, but he does not lose the right to vote on any question while presiding.

S1-5. No senator shall speak more than twice on any one motion or question without unanimous consent of the senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a senator who has spoken shall not speak again on the same motion or question to the exclusion of a senator who has not spoken.

S1-6. On order of business No. 8 (second reading of bills), in addition to other methods a recorded vote may be made in the following manner:

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the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S1-7. Only the following persons may be admitted to the floor of the senate during sessions: legislators, legislative officers and employees whose presence is necessary for the conduct of the business of the session, accredited members of the press, radio, and television, and former legislators. The rules committee shall be allowed to make exceptions for visiting dignitaries.

CHAPTER 4
Order of Business

S4-1. On order of business No. 2 (reports of standing committees), no debate shall be had on any report unless a minority report or a report without recommendation has been submitted. Any member seeking a reconsideration of the senate's action on the adoption of a committee report shall do so on order of business No. 6 by motion to reconsider. Any member may make such motion and need not have voted on the prevailing side. This rule shall apply notwithstanding any joint rule to the contrary.

CHAPTER 5
Motions

S5-1. All proper motions on second reading are debatable. If a motion to reconsider third reading action on a bill or resolution is carried, there shall be no further action on that bill or resolution until the succeeding legislative day.

CHAPTER 7
Committees

S7-1. The senate shall elect a committee on committees consisting of 5 members, except when the senate is evenly divided between parties, when the committee on committees shall consist of 6 members, 3 from each party. The committee on committees, with the approval of the senate, shall appoint standing and select committees of the senate and senate membership on joint committees except conference committees and special committees. The president shall appoint all conference committees and special committees, with the advice of the majority and minority floor leaders. The senate may change the membership of any committee on one day's notice.

The standing committees of the senate are as follows:

1. Agriculture, Livestock and Irrigation
2. Bills and Journal
3. Business and Industry

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4. Education and Cultural Resources
5. Finance and Claims
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration
10. Local Government
11. Natural Resources
12. Fish and Game
13. Public Health, Welfare and Safety
14. Rules
15. State Administration
16. Taxation

S7-2. The majority floor leader shall be an ex officio member of all committees in order to establish a quorum.

S7-3. When a conference committee report is filed with the secretary, the same shall be read under order of business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the committee of the whole, it may be considered on third reading the same legislative day.

S7-4. Pairs in standing committee and committee of the whole are prohibited.

CHAPTER 8
Rules and Journal

S8-1. (1) A motion to amend or adopt a rule of the senate shall be referred to the committee on rules without debate. A rule of the senate may be amended or adopted only with the concurrence of a majority of the senate and after one day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S8-2. Mason's Manual of Legislative Procedure governs the proceedings of the senate in all cases not covered by these rules.

CHAPTER 10
Nominations from the Governor

S10-1. The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by the constitution or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occurs in any such office, the governor shall appoint some fit person to discharge

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the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office.

S10-2. When nominations are sent by the governor to the senate for confirmation, they shall not be acted on before the next succeeding legislative day, except nominations sent by the governor on the last legislative day of the session, which shall be acted upon that day.

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA MEMORIALIZING MONIDA STAFFORD VAUGHN.

WHEREAS, the Senate of the State of Montana recognizes the following concerning Monida Stafford Vaughn, Senate Business Manager:

(1) In her more than 10 sessions of service as Senate Business Manager, she became an integral part of the Senate, not only because of her total recall of administrative matters but also because of her charm and warmth.

(2) Before the days of computerized inventories, Monida's brain was one. She knew the what and where of every single desk, chair, table, file cabinet, trash basket, paper, pencil, paper clip, or any other item belonging to the Montana Senate. However, she accepted the computer age and this past summer spent many hours preparing documents concerning each item belonging to the Senate so such information could be entered on the State's central computerized inventory, a service for which she refused pay.

(3) Monida S. Vaughn had a place for everything and everything had its place. She was organized and dedicated. In fact, one of her last acts consisted of writing a detailed note to her friends and coworkers, Earl Moritz and Ralph Erving, explaining exactly what had to be done that day, the exact location of each item that might be needed, and apologizing for being ill.

(4) Monida had a special place in her heart for the hundreds of young people who served as Senate pages during her tenure. The young people of Montana were a special part of her life.

(5) Monida's Christian faith was evident in her every act, and she often led the Senate in prayer as acting chaplain.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE SENATE OF THE STATE OF MONTANA AND ITS STAFF:

That on Saturday morning, January 8, 1983, the State of Montana lost one of its most dedicated, selfless servants, and we have all lost a dear friend. And while Monida will be fondly remembered in many different ways, those of us who knew her through the Legislature will cherish her in our memories for the kind, gentle, and caring person she always was. Monida loved people and people loved her. By her daily example she taught us what it means to serve others. Always cheerful and patient,

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Monida Vaughn was a comforting presence in our midst. To know and work with her was a privilege and a joy for each of us. It has been often said that the principal benefit of being a part of the Legislature is that you become friends with so many genuine people. Monida Vaughn was a personification of that. She will be deeply missed by the members and staff of this Montana Senate and others who have served before and, like us, have had their individual lives enriched through having known this compassionate Christian lady.

BE IT FURTHER RESOLVED, that we know Monida has been reunited with her dearest friend, Anne Wierenga, and with her Lord Jesus Christ, to whom Monida Stafford Vaughn's entire life was a testament.

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA THAT THE DEPARTMENT OF ADMINISTRATION PROCEED WITH THE CAPITOL RENOVATION PLAN THAT RETAINS THE SENATE CHAMBERS IN THEIR PRESENT LOCATION.

WHEREAS, the Montana Supreme Court has decided the matter of Pat M. Goodover, State Senator, and Carroll A. Graham, State Senator, vs. the Department of Administration, et al., wherein the Department of Administration was enjoined against relocation of the Senate chambers until legislative consent has been obtained; and

WHEREAS, the Montana Supreme Court stated in its opinion that "the Montana State Senate, a distinguished, honorable, and independent arm of the legislative body, has the right to determine where it will sit"; and

WHEREAS, the time for making the decision on the location of the Senate chambers and letting bids for renovation of the State Capitol is propitious in view of the upcoming construction season and in the interest of saving time and money; and

WHEREAS, there is an alternate plan for Capitol renovation that was proposed during the meeting of the 47th Legislature which retains the Senate chambers in their present location.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Department of Administration is directed to proceed with the alternate plan for Capitol renovation as proposed during the meeting of the 47th Legislature, which plan retains the Senate chambers in their present location.

BE IT FURTHER RESOLVED, that the Secretary of State deliver a copy of this resolution to the Director of the Department of Administration.

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SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TRANSMITTING RECOMMENDATIONS TO THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION REGARDING ITS REDISTRICTING PLAN SUBMITTED UNDER ARTICLE V, SECTION 14, OF THE MONTANA CONSTITUTION.

WHEREAS, a Montana Districting and Apportionment Commission was appointed in 1979; and

WHEREAS, the Montana Districting and Apportionment Commission has prepared its reapportionment plan for the legislative and congressional districts and delivered the plan to the 48th Legislature on January 5, 1983, pursuant to Article V, section 14(3), of the 1972 Montana Constitution and pursuant to 5-1-101, MCA; and

WHEREAS, the Senate must return the plan to the Commission with its recommendations on or before February 4, 1983, in accordance with the Montana Constitution; and

WHEREAS, the Senate chooses to return its recommendations in the form of a simple resolution; and

WHEREAS, the Senate of the State of Montana has considered the plan in its entirety and conducted a public hearing beginning January 20, 1983, at 10:30 a.m. and continuing for a period of 3 days; and

WHEREAS, no substantial objections were received as to the congressional redistricting; and

WHEREAS, substantial testimony and objections were received concerning the legislative reapportionment plan; and

WHEREAS, the Senate of the State of Montana, 48th Legislative Assembly, desires to express its approval of the congressional redistricting and disapproval of legislative redistricting; and

WHEREAS, the United States Constitution has recognized certain criteria to be implemented by the states in accordance with the one-man one-vote requirement of the 14th amendment to the United States Constitution; and

WHEREAS, this plan does not encompass a rational state policy; and

WHEREAS, this plan unduly tears apart political subdivisions; and

WHEREAS, this plan does not have compact districts of contiguous territories; and

WHEREAS, this plan does not preserve natural or historical boundary lines; and

WHEREAS, this plan does not incorporate the criteria of size and homogeneity of districts; and

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WHEREAS, this plan does not take into consideration the location of shopping centers; and

WHEREAS, this plan does not take into consideration the pattern of roads; and

WHEREAS, this plan does not include areas of coverage of daily and weekly newspapers or radio and television broadcast areas; and

WHEREAS, the Commission set an arbitrary deviation factor of 5% plus or minus from the ideal representative district population as its ultimate goal and disregarded all other criteria mentioned above; and

WHEREAS, Montana districts in several instances have an excessive deviation from the ideal representative district population; and

WHEREAS, in some districts it is obvious there was no good faith effort to achieve a goal of zero percent deviation from the ideal district population; and

WHEREAS, this plan is in violation of the one-man one-vote interpretation of the 14th amendment to the United States Constitution and Article V, section 14, of the Montana Constitution requiring "all districts will be as nearly equal in population as practicable"; and

WHEREAS, each Montana Senate district must have an identifiable representative; and

WHEREAS, the Commission failed to assign Senators to new districts who have terms which expire in 1986; and

WHEREAS, the Commission submitted an incomplete plan in that it failed to designate election dates for the new districts consistent with the Montana Constitution Article V, section 3; and

WHEREAS, a majority of states allow holdover Senators to serve under a new reapportionment plan and courts have held this not to be in violation of the people's constitutional rights; and

WHEREAS, in the relatively few states which have permitted the shortening of state senators' terms, one of the following has existed:

(1) express provision in the state constitution or statute;

(2) implementation by voter initiative; or

(3) elected Senators were subsequently found by the courts to have been elected under a previously unconstitutional apportionment plan; and

WHEREAS, none of these special circumstances exist in the state of Montana; and

WHEREAS, the Attorney General of the state of Montana has issued an opinion to the President of the Montana Senate indicating the necessity of designating districts for holdover senators whose terms do not expire until 1986; and

WHEREAS, the 14th amendment to the United States Constitution requires that no state shall make or enforce any law which shall abridge

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the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law; and

WHEREAS, Article II, section 4, of the Montana Constitution provides that no person shall be denied equal protection of the law and no person shall be discriminated against in the exercise of his political rights on account of culture, social origin or conditions, or political ideas; and

WHEREAS, it is the intent of the Montana Constitution that the chairman of the Districting and Apportionment Commission serve in a nonpartisan capacity in order to preserve the rights of the people of Montana; and

WHEREAS, the preponderance of the testimony presented to the Senate Standing Committee on State Administration evidenced political discrimination by a majority of the members of that Commission against certain political-social groups; and

WHEREAS, the records of the actions of the Commission in formulating the plan indicate 61 contested votes, 2 of which were merely procedural, and 57 other votes where the majority was made up of members of one political party; and

WHEREAS, the chairman of the Districting and Apportionment Commission has admitted that he acted in a partisan capacity throughout the redistricting process and this resulted in the Commission acting in a partisan manner throughout the entire redistricting process; and

WHEREAS, the resultant legislative redistricting clearly evidences this political bias in favor of the Democratic party to the exclusion of all other bases for redistricting; and

WHEREAS, this resulted in an invidious discrimination against the people of Montana and their social, cultural, and political beliefs and ideas; and

WHEREAS, these actions by the Districting and Apportionment Commission yielded a constitutionally infirm plan for the redistricting of Montana's legislative districts under both the Montana and United States Constitutions; and

WHEREAS, the Commission members are not elected by the people or appointed by the Governor subject to confirmation by the Senate; and

WHEREAS, Montana Constitution Article V, section 14(2), does not provide for any regulation or control over the Commission; and

WHEREAS, the Commission members are not responsible to anyone; and

WHEREAS, large segments of people in the state of Montana are being deprived of their right to a republican form of government as provided by the United States Constitution Article IV, section 4, which provides "the United States shall guarantee to every state in the union a republican form of government . . ."

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate recommends that the Montana Districting and Apportionment Commission adopt the congressional redistricting plan;

BE IT FURTHER RESOLVED, that the Montana Districting and Apportionment Commission redraw its redistricting plan of the legislative districts of Montana in order to meet the constitutional requirements and objections mentioned above; and

BE IT FURTHER RESOLVED, that the attached recommendations be adopted by the Commission in redrawing the legislative districts of Montana (see attached maps and recommendations); Attachment B, pages 1 through 4 (11 maps).

BE IT FURTHER RESOLVED, that the Montana Districting and Apportionment Commission designate senatorial districts for each senator whose term expires in 1986 in such a manner that each Senate District have an identifiable representative; and

BE IT FURTHER RESOLVED, that the Montana Districting and Apportionment Commission establish election dates for the Senate Districts consistent with Montana Constitution Article V, section 3; and

BE IT FURTHER RESOLVED, that if there is insufficient time for the Commission to accomplish such task that the Montana Supreme Court assume the responsibility of redistricting and reapportionment; and

BE IT FURTHER RESOLVED, that copies of the following documents be attached to this resolution:

(1) Attorney General Opinion to Senator Stan Stephens dated January 21, 1983; Attachment C, 3 pages.

(2) The Senate Journal for the third legislative day; Attachment D, 3 pages.

(3) Minutes of the meeting of State Administration Committee of January 20, 1983, at 10:30 a.m. regarding Reapportionment Commission. Attachment E, 28 pages.

BE IT FURTHER RESOLVED, that copies of this resolution and attachments be sent by the Secretary of State to the chairman of the Montana Districting and Apportionment Commission; the Honorable Ron Marlenee, Congressman from the Second Congressional District; and the Honorable Pat Williams, Congressman from the First Congressional District.

RECOMMENDATIONS

(1) Senate Districts 25, 28, 29, 32, 33, and 34, as adopted by the Commission, be withdrawn and the following House Districts be paired to form Senate Districts:

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50 and 57
56 and 58
55 and 63
64 and 65
66 and 67
68 and 49;

(2) House Districts 64 through 66, as adopted by the Commission, be withdrawn and the plan for Ravalli County referred to by the Commission as plan B be adopted. (Plan B creates three house districts solely within the boundaries of Ravalli County. Generally, one house district is in the southern half of the county; the northern half of the county is divided into an eastern and a western house district);

(3) House Districts 9, 11, and 12, as adopted by the Commission, be withdrawn and the plan for Glacier, Pondera, and Teton Counties referred to by the Commission as plan 2 be adopted. (Generally, plan 2 places eastern Pondera County in a house district with Teton County and places western Pondera County, including Conrad, in a house district with a portion of Glacier County, including a portion of Cut Bank);

(4) The house districts consisting generally of Glacier and western Pondera Counties, as recommended in subsection (3), be paired to form a senate district and the house district consisting of Teton and eastern Pondera Counties, as recommended in subsection (3), be paired to form a senate district with the Commission's proposed House District 10.

(5) Senate Districts 17 through 19, as adopted by the Commission, be withdrawn and the following House Districts be paired to form Senate Districts:

33 and 37
34 and 35
36 and 38;

(6) House Districts 23, 24, 27, 28, 99, and 100, as adopted by the Commission, be withdrawn and the plan referred to by the Commission as plan X for Big Horn, Powder River, Carter, Fallon, Wibaux, Dawson, McCone, Garfield, Rosebud, and Treasure Counties be adopted. (Plan X generally combines: all of Powder River, Carter, and Fallon Counties into one House District; Wibaux and a part of Dawson County into one House District; the remainder of Dawson County and McCone County into one House District; Garfield, Treasure, and a portion of Rosebud County into one House District; the remainder of Rosebud County and a portion of Big Horn County, including all of the Northern Cheyenne Reservation and a portion of Hardin, into one House District; and the remainder of Big Horn County, including a portion of Hardin and all of the Crow Reservation contained in the county, into one House District);

(7) Senate Districts 7 and 8, as adopted by the Commission, be withdrawn and the following House Districts be paired to form Senate Districts:

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14 and 15
13 and 16;

(8) House Districts 83 and 86 through 90, as adopted by the Commission, be amended so as to place areas in Yellowstone County which are urban in nature with predominantly urban districts and areas which are rural in nature with the district consisting primarily of rural Stillwater County. This recommendation additionally shifts an area in the eastern portion of House District 87 into House District 88, an area in the southern portion of House District 88 into House District 89, and an area in the southwest portion of House District 89 into House District 87.

(9) The following plans be studied by the Commission and be worked into a form that can be incorporated into the legislative redistricting plan:

(a) The plan for northeast Montana, which includes House Districts A through F in Sheridan, Daniels, Roosevelt, Valley, Phillips, Blaine, and portions of Fergus and Chouteau Counties; and

(b) The plan for Gallatin, Madison, and Silver Bow Counties, which includes 11 house districts.

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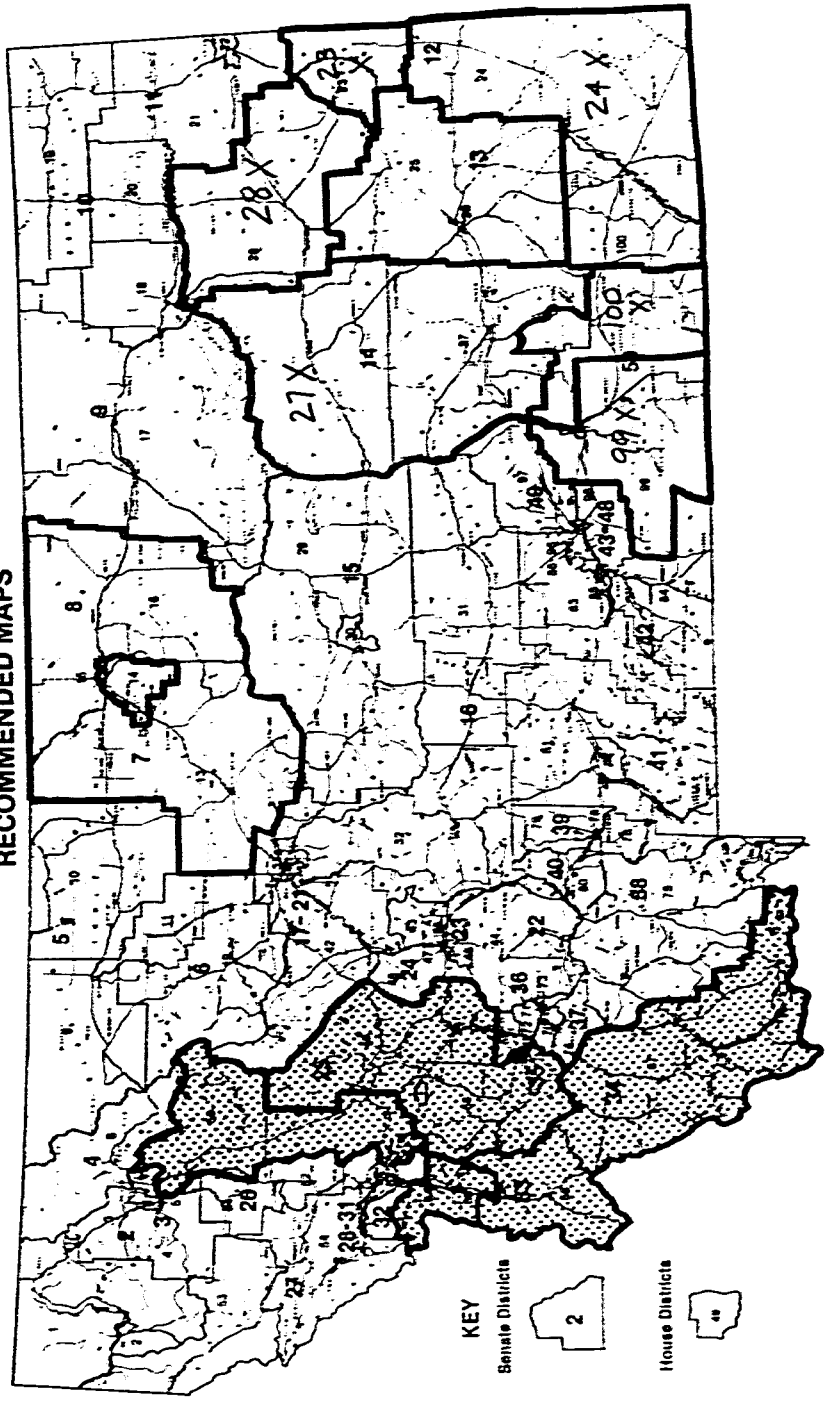
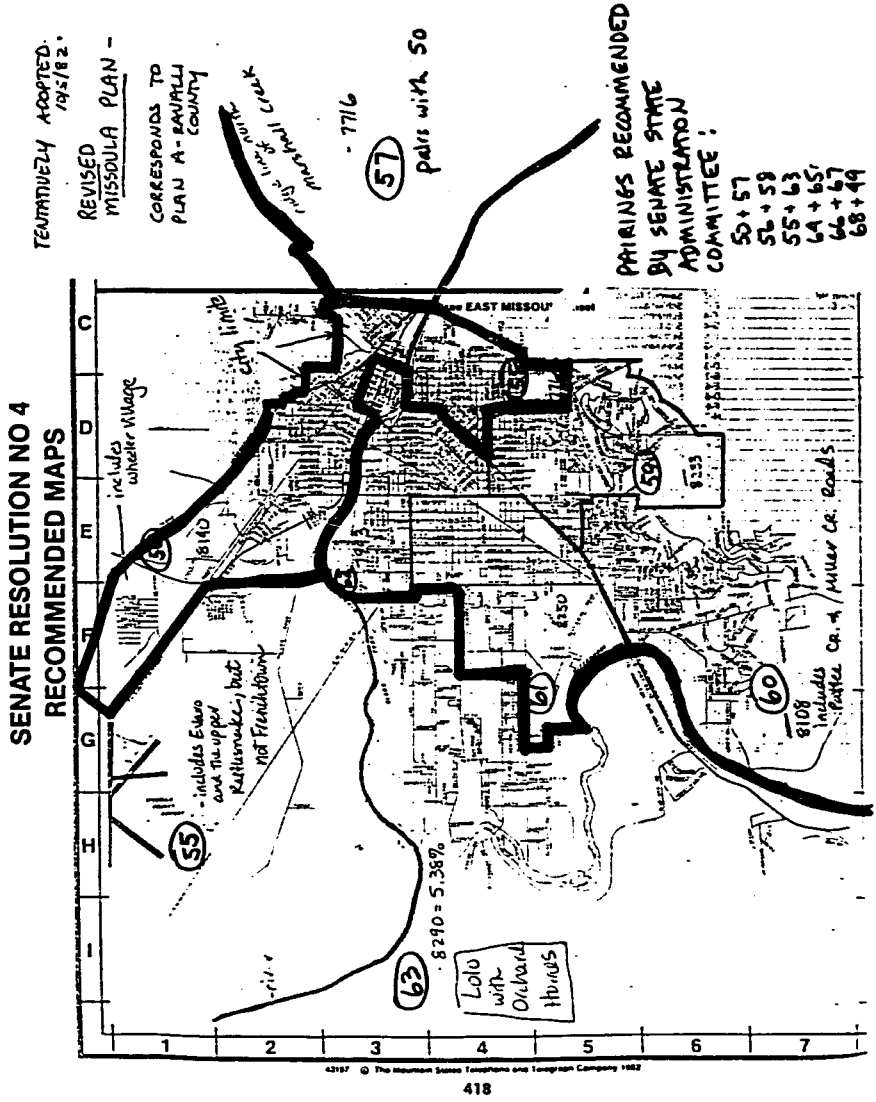
SENATE RESOLUTION NO 4
RECOMMENDED MAPS





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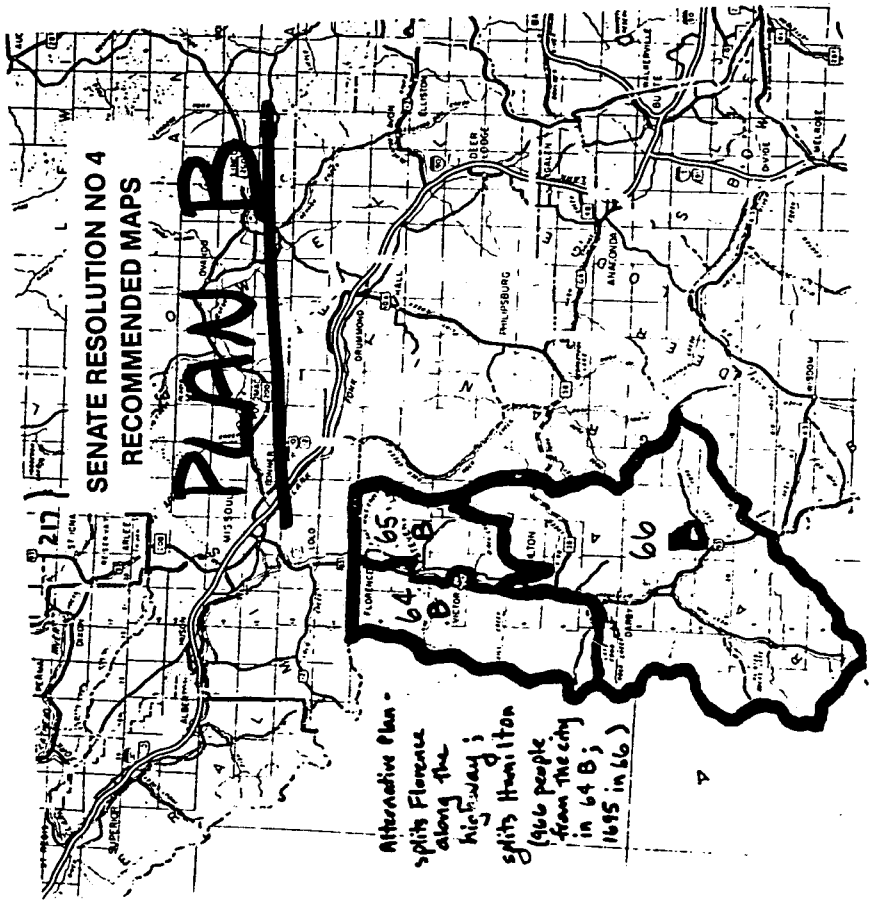
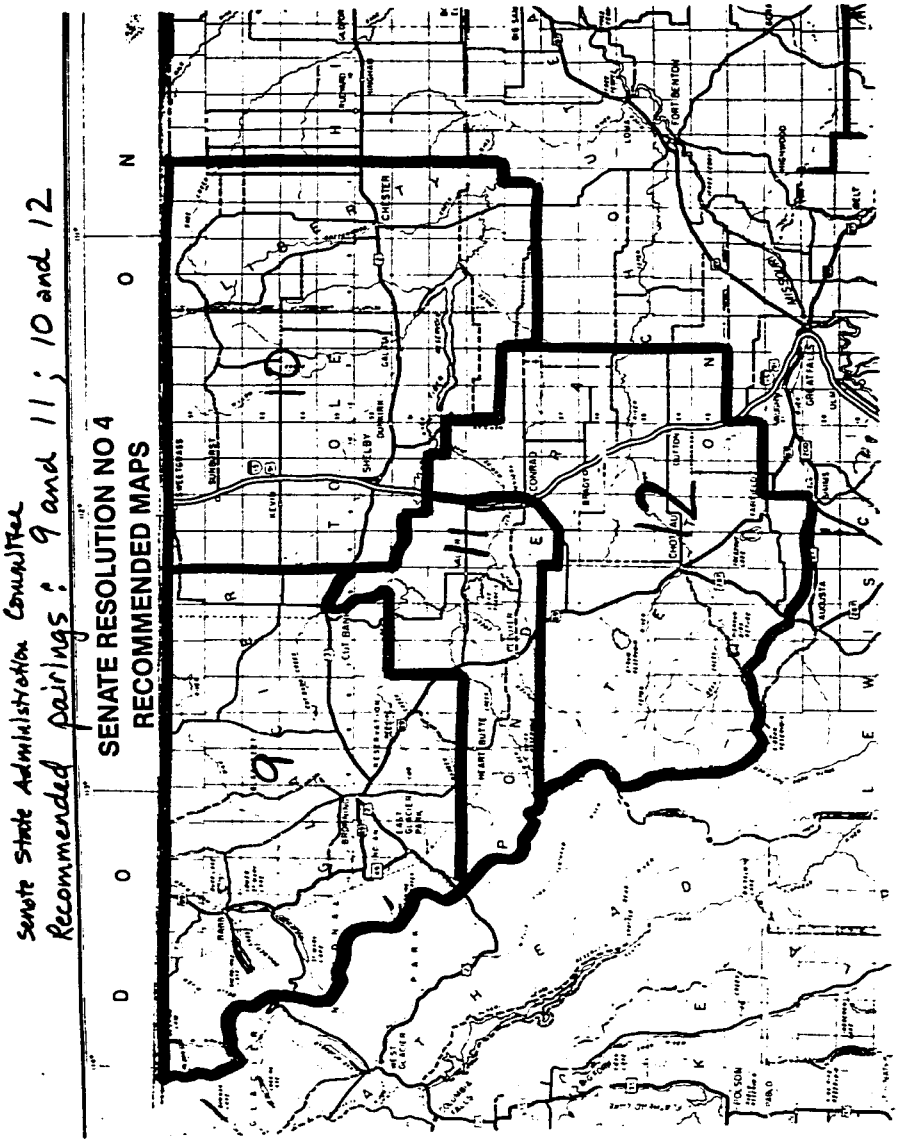

SENATE RESOLUTION NO 4
RECOMMENDED MAPS
PLAN B
Alternative Plan - splits Florence along the highway; splits Hamilton (save people from the city in 64 B; 1695 in 66)
64
65
66
B
B
B
212



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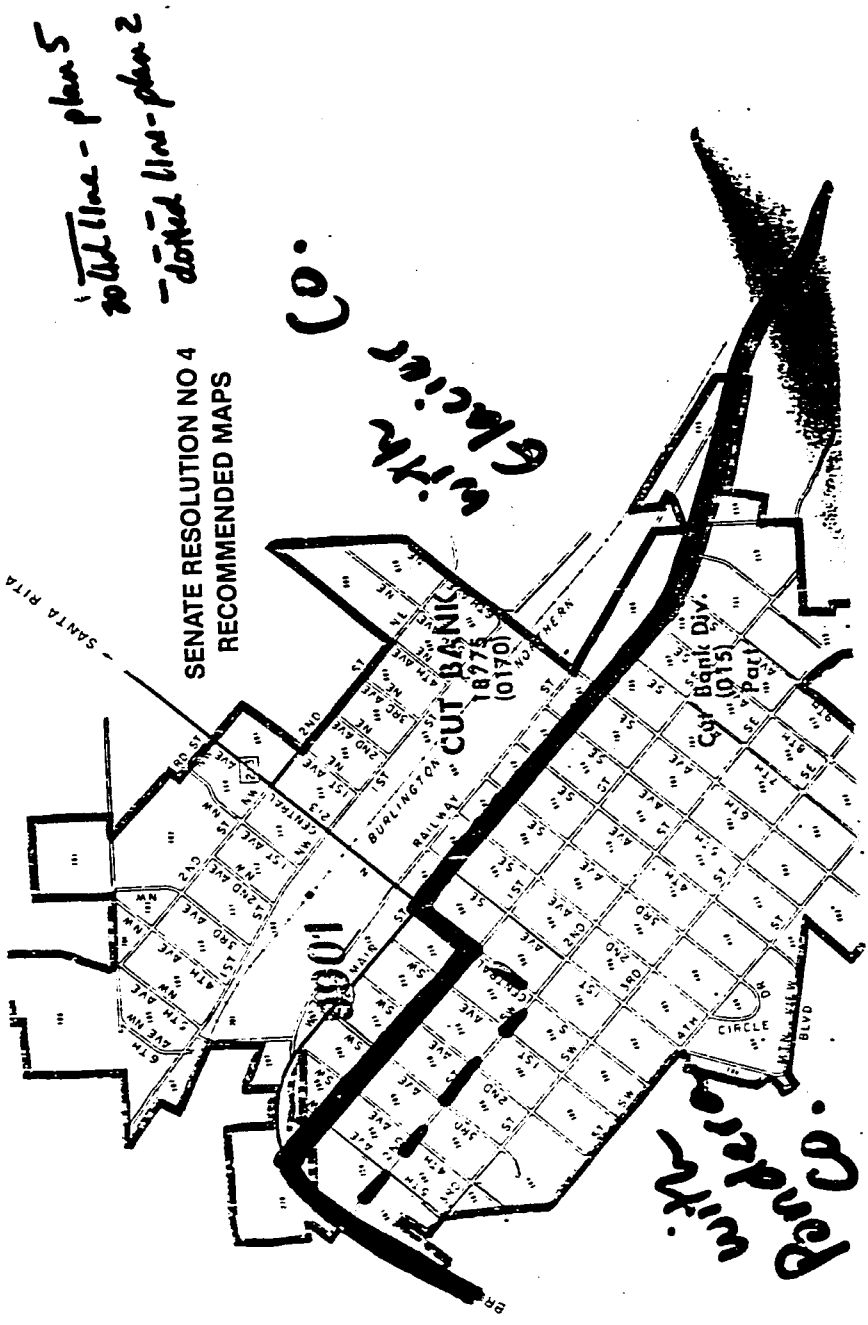
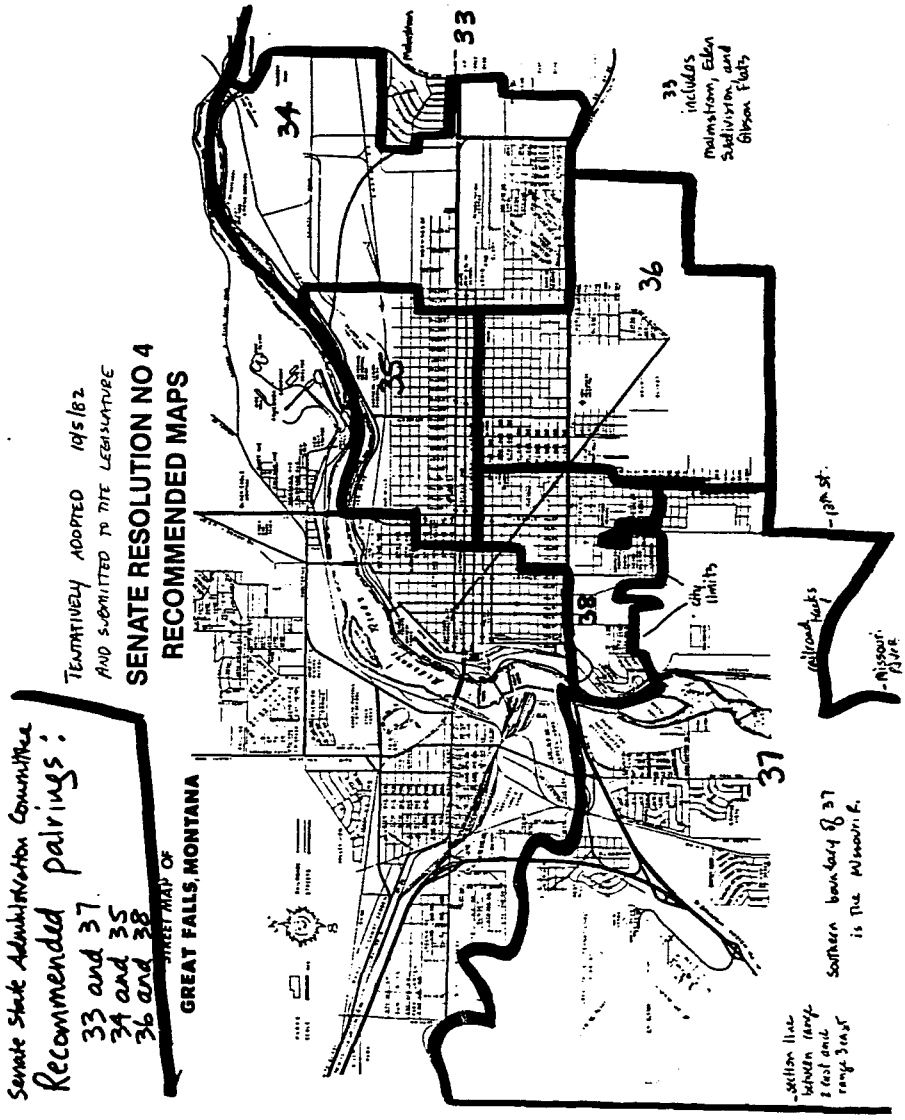

SENATE RESOLUTION NO 4
RECOMMENDED MAPS
CUT BANK
18775
(0170)
Cut Bank Div.
(015)
Part
BURLINGTON
RAILWAY
SANTA RITA
CIRCLE
BLVD



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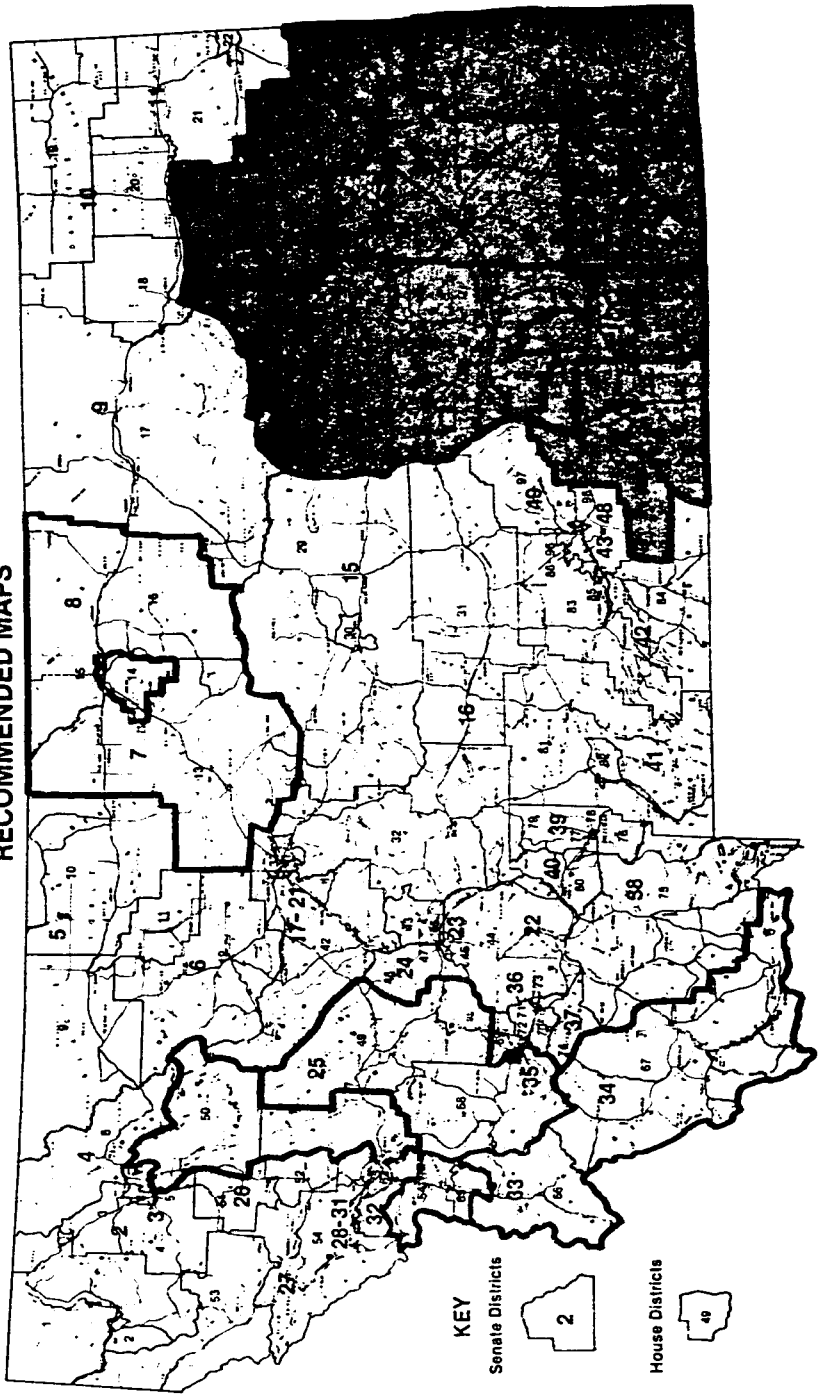
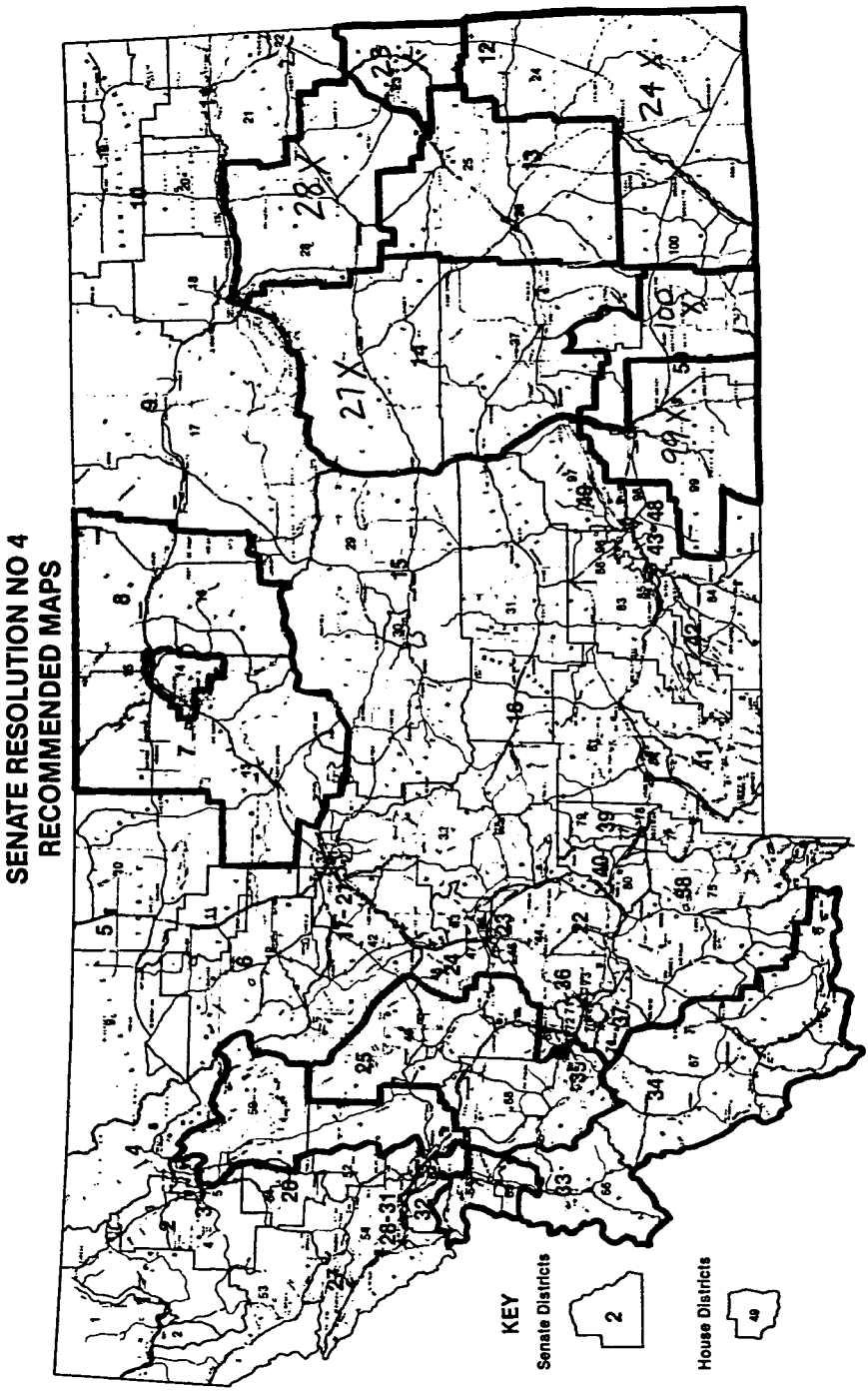
SENATE RESOLUTION NO 4
RECOMMENDED MAPS





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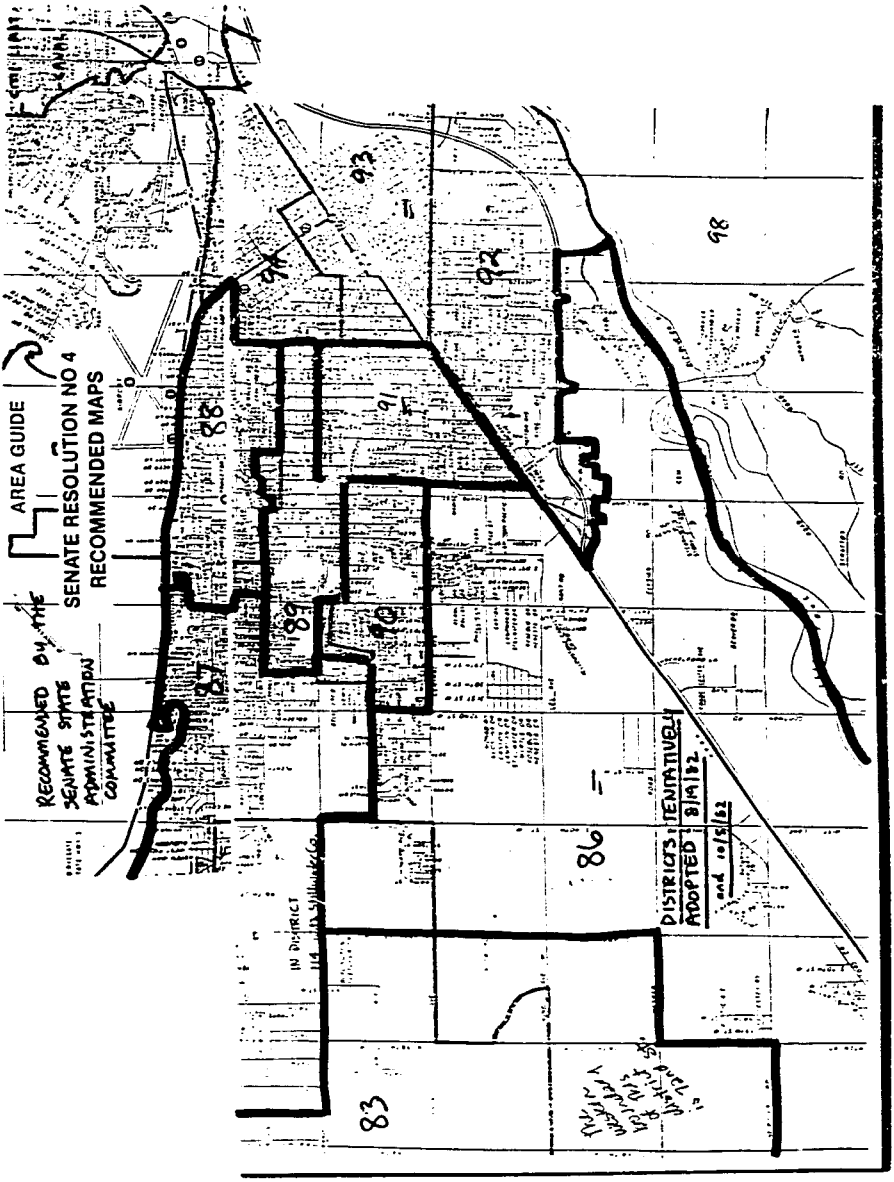
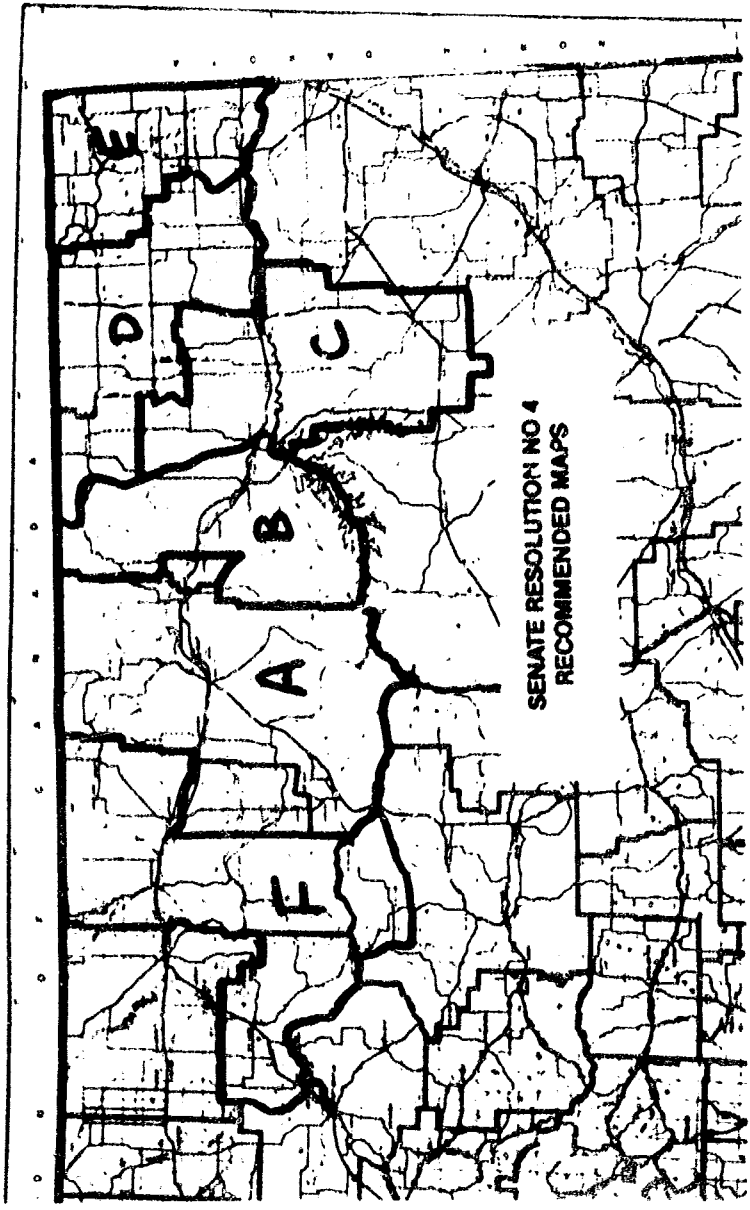
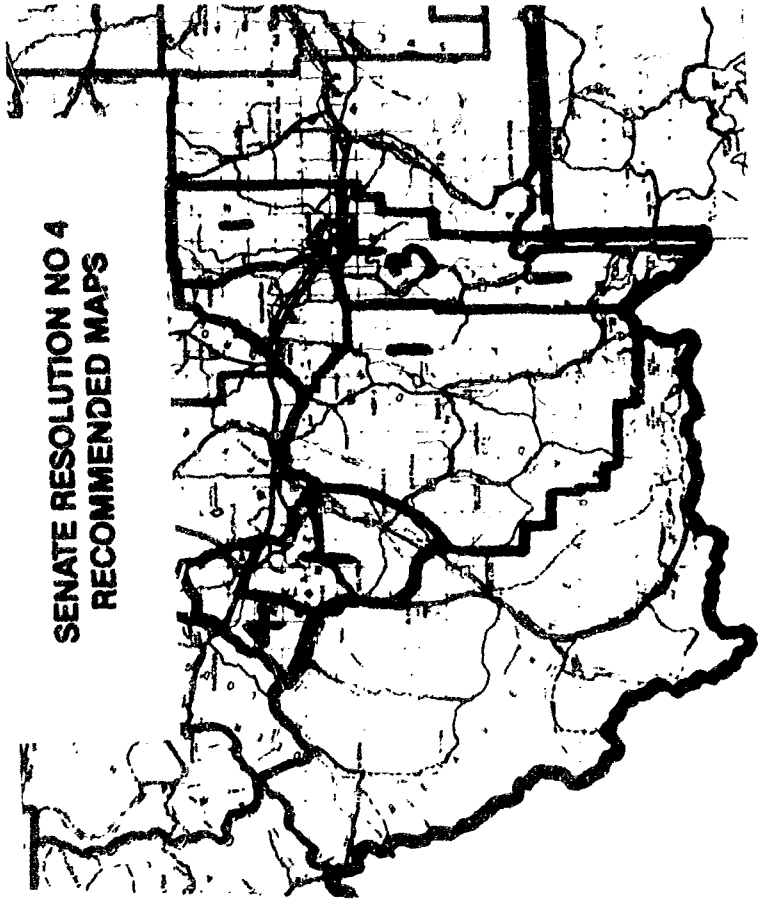

AREA GUIDE
SENATE RESOLUTION NO 4
RECOMMENDED MAPS
RECOMMENDED BY THE SENATE STATE ADMINISTRATION COMMITTEE
DISTRICTS: TENTATIVELY ADOPTED 8/4/82
and 10/5/82
IN DISTRICT 114
83
86
87
88
89
90
91
92
93
98


SENATE RESOLUTION NO 4
RECOMMENDED MAPS
A
B
C
D
E



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STATE
OF
MONTANA
ATTORNEY GENERAL
MIKE GREELY
[illegible] JUSTICE BUILDING, HELENA, MONTANA 59620
TELEPHONE (406) 449-2026

ELECTIONS - Election of state senators, length of term of office after reapportionment;

LEGISLATURE - Length of term of office of state senators after reapportionment;

REAPPORTIONMENT - Length of term of office of state senators after reapportionment;

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 1 (1983);

MONTANA CONSTITUTION - Article V, sections 3 and 14.

HELD: The terms of office of members of the Montana State Senate who were elected in 1982 may not be shortened as a result of reapportionment and redistricting.

21 January 1983

Senator Stan Stephens
Office of the President
Montana State Senate
P.O. Box 156, Capitol Station
Helena, Montana 59620

Dear Senator Stephens:

You have requested my opinion as to whether the terms of office of members of the Montana State Senate who were elected in 1982 must be shortened as a result of reapportionment and redistricting.

As you noted in your request, I recently issued an opinion concerning a similar inquiry having to do with the terms of office of Missoula aldermen. See 40 Op. Att'y Gen. No. 1 (1983). That opinion concluded that aldermen elected to four-year terms in 1981 did not need

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C (2)

to run for re-election in 1983 as a result of reapportionment and redistricting. The conclusion was based on the fact that Montana state law provided for four-year terms for aldermen, without establishing any procedure for shortening the terms after reapportionment. No Montana Supreme Court decision has been rendered on this issue, so research of the law in other states was necessary. This research disclosed a number of court decisions in jurisdictions where similar questions had arisen. Those decisions hold that unless there is a constitutional or statutory provision authorizing shortened terms, an elected official whose term runs beyond the reapportionment year may be held over for the duration of the term for which he or she was elected without resulting in a violation of the notions of equal protection and representative government. I refer you to the cases cited in the Missoula aldermen opinion.

With respect to the terms of State Senators, the Montana Constitution, Mont. Const. art. V, § 3, provides for four-year terms on a staggered basis. The 1972 Constitution's Transition Schedule contained a procedure for all senate terms to end on December 31, 1974, and for the State Senators subsequently elected to draw lots to establish a term of two years for one-half of their number. This provision specifically applied to the first election of state legislators to take place after the reapportionment plan became effective in February, 1974, and was necessary to implement the 1972 Constitution's new requirement of staggered terms for State Senators. That section of the Transition Schedule was to be removed from the Constitution as soon as it had been executed. The provisions of section 5, Terms of Legislators, were executed and certified by a letter from the Attorney General to the Secretary of State on March 24, 1977.

The transcripts of the 1972 Constitutional Convention include a brief discussion by delegates as to whether terms of state senators should be shortened upon reapportionment. See March 7, 1972, transcript at 1568-69. The discussion is inconclusive with one delegate suggesting that if the terms were to be shortened the convention should specifically address that issue, and another delegate noting that the courts would deal with the problem. Even if the transcripts were clear as to the constitutional delegates' intent, the courts would not consider them unless there is some ambiguity in the language of the Constitution. See Sutherland, Statutes and Statutory Construction (1973)

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at § 46.04. The language of Mont. Const. art. V, § 3 is clear. State Senators shall be elected for a term of four years. The Montana Constitution and Montana statutes provide no authority for changing those terms after reapportionment. The terms of those members of the State Senate who were elected in 1982 do not expire until 1986.

The reapportionment plan is the responsibility of the Montana Districting and Apportionment Commission. The Commission has the inherent authority under the Montana Constitution Article. V, section 14 to do what is necessary to implement a plan that complies with the State's laws. See Cargo v. Paulus, 635 P.2d 367 (1981). This means that the Commission must not only redraw district boundaries, but also designate the election dates for the new districts. Various states have handled the details of reapportionment differently with respect to how holdover senators fit into the reapportionment plan. In Montana, these details are the responsibility of the Districting and Apportionment Commission.

THEREFORE, IT IS MY OPINION:

The terms of office of members of the Montana State Senate who were elected in 1982 may not be shortened as a result of reapportionment and redistricting.

Very truly yours,

MIKE GREELY
Attorney General

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SENATE JOURNAL
of the
Forty-eighth Legislature

OFFICE OF THE SECRETARY OF THE SENATE

THIRD LEGISLATIVE DAY

Helena, Montana
January 5, 1983

Senate Chamber
State Capitol

Senate convened at 1:16 p.m., President Stephens presiding. Invocation by the Chaplain. Pledge of Allegiance to the Flag.

Roll call. All members present except Goedover, excused. Quorum present.

Mr. President: We, your Committee on Bills and Journals, having examined the daily journal for the second legislative day, find the same to be correct.

Tveit, Chairman

REPORTS OF STANDING COMMITTEES

BILLS (Tveit, Chairman):
Correctly printed and placed on the members' desks: SB 14, SB 15.

LEGISLATIVE ADMINISTRATION (Kolstad, Chairman):
SB 10, do pass. Report adopted.

FIRST READING OF BILLS

The following Senate bills were introduced, read first time, and referred to committee:

SB 25, introduced by Hager. Referred to Committee on Highways and Transportation.
SB 26, introduced by Hager, (By Request of the Department of Health and Environmental Sciences). Referred to Committee on Public Health, Welfare and Safety.
SB 27, introduced by Story. Referred to Committee on Education.
SB 28, introduced by Story. Referred to Committee on State Administration.
SB 29, introduced by McCallum, (By Request of the Joint Subcommittee on Business). Referred to Committee on Agriculture, Livestock and Irrigation.
SB 60, introduced by Conover. Referred to Committee on Agriculture, Livestock and Irrigation.
SB 61, introduced by Norman. Referred to Committee on Public

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Health, Welfare and Safety.

At the request of Senator Hazelbaker, and without objection, the Senate reverted to Order of Business No. 6.

MOTIONS

Senator Hazelbaker moved that the President be empowered to appoint a committee of three to notify the House of Representatives that the Senate is ready to meet in joint session. The motion carried unanimously.

President Stephens appointed Senator Aklestad, Chairman, Senator Gage, and Senator Regan. The committee was then dismissed to notify the House of Representatives that the Senate was ready to meet in a joint session.

Senator Hazelbaker moved that the Senate stand in recess subject to the call of the chair. Motion carried unanimously.

Senate recessed at 1:21 p.m.

Senate resumed at 1:22 p.m.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 5.

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

Representative Bengtson and her committee from the House of Representatives informed the Senate that the House awaited its presence in the House to hear the Reapportionment Commission.

President Stephens advised that the Senate accepted and would be there shortly.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 3.

REPORTS OF SELECT COMMITTEES

The Sergeant-at-Arms announced the committee of three to notify the House of Representatives that the Senate was ready to meet was at the door. Senator Aklestad reported they had informed the House that the Senate would enjoy being in session with the House. Senator Aklestad also reported the House was ready to receive the Senate.

MOTIONS

Senator Hazelbaker moved that the Senate recess and proceed to the House of Representatives for the purpose of receiving the Reapportionment Plan and Reapportionment Commission. Motion carried unanimously.

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Senate recessed at 1:26 p.m.

Joint Session convened at 1:30 p.m.

JOINT SESSION - REAPPORTIONMENT COMMISSION

Senator Hazelbaker moved that the body resolve itself into a joint session for the purpose of receiving the Reapportionment Plan from the Reapportionment Commission. Motion passed unanimously.

Senator Hazelbaker moved that the roll of the joint session be dispensed with. Motion passed unanimously.

Senator Hazelbaker moved that the joint session resolve itself into the Committee of the Whole for the purpose of the hearing. Motion passed unanimously.

PRESIDENT STEPHENS: Ladies and Gentlemen of the House and Senate and Distinguished Guests and Members of the Reapportionment Commission:

Before introducing the members of the Commission, we would like to explain to the members of the Legislature that this joint session today is an informal hearing only on the Reapportionment Plan. The format of this afternoon session will be a presentation by the Reapportionment Commission and the staff. At the conclusion of their official presentation, we will entertain questions to members of the Commission and Anne Bradsky by any member of the Legislature. We ask that you limit your questions to the scope of general in nature. We will not, today, entertain any questions regarding the specific parameters of the districts or the individual concerns of a particular legislator. You will have ample opportunity to address those issues and air your feelings at subsequent hearings in the House and the Senate. That's when we get down to the nitty gritty of the specifics. Today, we ask that we keep to the general scope of the overall reapportionment process.

I am sure that Speaker Kemmis has informed you that in Room 316 we have a staff room that contains all the reapportionment maps which are the product of this Reapportionment Committee's endeavor. They are there along with Anne Bradsky, the staff researcher, to answer any questions and explain anything you may wish to know that you now have under consideration. It may well serve you to just ask questions about your own area so that you are fully informed and better able to express your opinions.

I will now introduce the members of the Commission. Eugene Mahoney, Chairman of the Commission, is unable to be with you today. The two Democratic members are JoAnn Woodgerd, Stevensville, Jim Patma, Havre, Mrs. Jack Galt, Helena, and John Poore, Havre. These are the four members. The Chairman of the Commission is unable to be here, Mr. Eugene Mahoney, Thompson

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Falls.

The purpose of the presentation is to present the project to the Legislature. JoAnn Woodgerd will begin the presentation.

COMMISSIONER WOODGERD: I have a statement that Chairman Mahoney dictated to the Legislative Council which reads as follows:

Mr. President, Mr. Speaker, Members of the 48th Legislative Assembly. This is the time and place set for the formal presentation of the Commission's plan for redistricting the congressional districts and the Montana House of Representatives and Montana Senate to the Montana Legislature convened in regular session as required by the Montana Constitution. Before doing this I would like to briefly discuss the method of appointment and the constitutional criteria under which we must operate.

The Commission is composed of five persons, two appointed by the majority leadership and two by the minority leadership. The four so appointed were to select the fifth member who is automatically the chairman. In the event the four cannot agree then it becomes the duty of the Supreme Court to appoint the fifth member. I was appointed by the Supreme Court. Two of the original commissioners are no longer with us. Mary Bell is now deceased and Nancy Mageneis married and moved to New Zealand.

The present Commissioners are as follows: Louise Galt, Helena, Montana; JoAnn Woodgerd, Stevensville, Montana; Jim Pasma and John Kuhr both from Havre, Montana. I am from Thompson Falls, Montana. In forming legislative districts the Commission must adhere to the state's constitutional requirements of population equality, compactness, and contiguity. The ideal house district population is 7,867, the state's population divided by 100. The Commission is attempting to create districts that will deviate from that ideal by no more or less than 5%, thus the acceptable population range is 7,473 to 8,260. The Commission uses 1980 census data as its population base. The other criteria adopted by the Commission for forming districts are: the consideration of geographic boundaries such as the continental divide or major rivers; government boundaries, such as Indian reservations, county, city, legislative, and precinct lines; and communities of interest such as trade areas, communication networks, etc.

The Commission adopted Plan C for the congressional districts which to date has met with complete approval of everyone including the political parties, the two congressmen and the people in the districts involved. The overall range expressed in absolute and relative terms is 94 or .02%.

The senatorial districts presented some problems particularly in western Montana and the Commission asked for recommendations and suggestions on these. I am very sorry I am unable to be present but it appears that my trip to Helena has been jinxed from

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the very beginning. I started out from Tucson last evening. My flight was 1 1/2 hours late into Salt Lake and therefore missed connections into Helena. The plane that was to arrive in Helena at 12:40 had problems and will not leave Salt Lake until 2:10. I wish to assure the members of the legislature and its respective committees that I will try to make myself available for any future meetings if they so desire. One of the commission members will make the formal presentation to you. Thank you very much.

Jim Pasma will make the formal presentation.

COMMISSIONER PASMA: It is with some pride and certainly a good deal of relief that I present this report and recommendations on behalf of the Reapportionment Commission. Anne Brodsky will now make a presentation.

BRODSKY: Mr. President, Mr. Speaker, and Members of the House and Senate of the 48th Legislative Assembly:

I am here today to present a rational and systematic account of a process which I understand is regarded by most everyone else as only mysterious and highly emotional.

Before I begin this presentation, I wish to clarify what my role has been as Legislative Researcher for the Commission. I believe that there has been a certain amount of misunderstanding as to who has been responsible for the decisions, particularly as I walk through the halls of the Capitol and am questioned, "What have you done with my district?" The Reapportionment Commission has been responsible for the districting decisions. I have acted as researcher and have provided technical assistance and provided the Commission with options. My role with the Commission is probably particularly important during the next 30 days when I will be available to you on a regular basis to discuss districting proposals. I emphasize that the opinions you have must be presented directly to the Commission rather than to me.

When you do meet again in your separate sessions, you will have on your desks packets of information from the Reapportionment Commission containing several items, including a copy of the provisions of the Montana Constitution pertaining to reapportionment. You will also have a map of the Commission's tentative Congressional district plan as well as a color-coded map of the legislative districts that the Commission has tentatively adopted. This is not a final district plan--there will still be the opportunity for change. The numbering system now before you on the map is different than this numbering system with which you have been familiar during the last couple of years. For example, the district in Powell County has been referred to as 10%. Now we have renumbered it as District 49. The numbering system starts in the Northwest corner, and Lincoln County is No. 1. Also in this packet is a cross-reference system of the old numbering system used and the new numbering system adopted. Also, there is a brochure from the Census Bureau which indicates population counts

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for the counties, county census divisions, and incorporated places as well as census data for 1970 and 1980 with an indication of the percentage change in population over the decade.

As Senator Stephens stated, we have set up in Room 316 a set of display maps of the new legislative districts. There will be the statewide map displayed on the wall and maps of any counties that contain more than one legislative district with the boundaries highlighted in red. Also displayed are city maps with highlighted district boundaries. These maps will be on display during the next 30 days for your review and perusal. I will be available to meet with any of you who have questions on the district boundaries or for those of you who would like to devise alternative proposals that you may wish to propose to the Commission.

Reapportionment is the redistricting of political district boundary lines, and the process is undertaken every ten years in every state of the country. Primarily, the purpose is to create political districts that are roughly equal in population so that the weight of one person's vote is equal to the weight of another's. The basis of the decisions was the Equal Protection Clause of the U.S. Constitution for state legislative districts and Article I, Section II of the Constitution for congressional districts requiring districts to be apportioned on the basis of population.

Four members of the Commission were appointed in 1979 by the House and Senate Majority and Minority leaders. Within 20 days after their designation, the four Commissioners were to select the fifth member to serve as the Chairman of the Commission. If the four members failed to select a fifth member within the time prescribed, the Supreme Court was responsible for selecting him. In 1979, as in 1973, the four members were unable to agree on the fifth member, and the Court made the appointment. The Commission was responsible for redrawing both legislative and congressional districts. The plan must be submitted to the first Legislature meeting in regular session after the Commission's appointment in 1979, and after the census figures are available. Census figures were available in March, 1981. This is the first regular session meeting following those events. The Legislature has 30 days to review the Commission's plan from the time that the Commission does submit the plan to the Legislature so that by February 4, this legislative assembly must return the plan with Legislators' recommendations back to the Commission. Thirty days following the receipt of the Legislature's recommendations by the Commission, the Commission must file the final plan at the Office of the Secretary of State, and at that time the plan becomes law and the Commission is dissolved.

The State Constitution has established certain criteria that the Commission must adhere to. The Constitution requires that single-member districts be formed and be nearly equal in population as possible with districts made up of compact territory and contiguous to each other. There are consequent stipulations

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that the House of Representatives must be between 80 and 100 districts and that the Senate be half of that number: 40-50 districts.

One of the first tasks undertaken by this Commission was to establish that it would attempt to create the districts keeping with tradition. The change in congressional districts was received without objections to date from any people. The change that was made between the existing district and recommended new district included Toole, Liberty, Pondera and Meagher counties being moved from the Eastern to Western District. The difference in population of the two districts is 47 people above the ideal district size in the Eastern District and 47 below in the Western District. This was an overall range of 94 people, a .02 percent deviation. The overall relative range of the 100 House districts is 10.94 percent and the overall range of the 50 Senate districts is 10.18 percent. This seems to be relatively a good improvement over the plan created by the 1973-74 Reapportionment Commission, where the overall range was 15.48 percent for the House of Representatives, while the overall range in the Senate was 13.08 percent. The 100 House districts were created first and we returned to pairing those to the Senate districts. Once it was realized that rarely could all the criteria be met in creating individual House districts, the task became that of applying a balancing test of the criteria in the individual House districts and on a regional basis. The Commission discovered that districts could not be created in an isolated manner and that a decision made in one area would have effects that would extend across the entire state, creating a ripple effect. Although the Commission first took action on districts in Northeastern Montana, it is my sentiment that the Commission did not actually begin in Eastern Montana. It continually moved east to west, north to south, west to east, south to north, throughout the whole process. No one was left behind, and it was up to the Commission to look at the entire picture. For example, in Meagher County the Commission considered placing that county in the district to the north of it, south, east, and west. The Commission looked at all of these options and had to make its decision based on the best available alternatives for entire areas.

The Commission did proceed from the rural to the urban areas, and the reason for this progression was that the census data from which the Commission worked was available in more flexible terms in the urban centers than it was available in the rural areas. In rural areas, the smallest census unit available was an enumeration district, and it usually comprised a large geographic area and often contained a large population. For example, one enumeration district outside Helena contained over 3,000 people, which is just under 50 percent of a district size, and this district creates significant limitations on the options available to the Commission. In contrast, in the urban centers the census provided details on a block-by-block basis, and the population contained in the census block was usually under 100, the average between 30 and 60 people; and having that great amount of flexibility, the

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Commission worked on these areas last.

In developing the proposals I had access to all the census material, and I put proposals together for the Commission's review based on the criteria they had set forth, and I put together these proposals with many of your incumbent legislators, local planners, County Clerks and Recorders and others. In some areas of the state we put together anywhere from five to seven proposals. They were drafted into set forms and they brought that proposal to a public hearing. In other areas all parties agreed on one proposal, and only one proposal was presented to the Commission. The Commission did its work on a regional basis and hearings were conducted on a regional basis. Northwest Montana was divided into 21 House districts; Missoula County 7; Ravalli County 1; Silver Bow, Powell, Granite and Deer Lodge Counties contained eight districts. In Gallatin County the Commission considered whether to create 5 or 6 districts. In Lewis and Clark County there were 5 House districts; in Cascade County there are ten. The Glacier County area had 7 House districts, and Northeast Montana 5. In Central Montana, Fergus, Petroleum, Judith Basin Counties had 4, Bighorn, Garfield, Rosebud and all counties east of these had 10 House districts; Yellowstone County 14; Park, Sweetgrass, Stillwater, Carbon, 4.

Hearings were held throughout the State. The Commission received quite a bit of input from the public before they made decisions. Decisions made were tentative ones. They have been changed throughout the whole process, and even now the proposals being presented to the Legislature are tentative proposals and do not become final until the plan is filed with the Secretary of State. I will read from the minutes of the Commission in November in which they specifically requested that the Legislature offer its recommendations:

"Commissioner Woodgerd moved that the Commission present the plan to the Legislature with the Senate districts as currently adopted with a note that we realize that the alignment of senate districts in Western Montana may not be the best possible alignment and that we particularly would like their comments and suggestions for other methods of aligning Senate districts before we adopt our final plan. Commissioner Pasma seconded the motion. Vote on motion: Aye - Pasma, Woodgerd, Mahoney. No - Gelt, Kuhr. The motion passed."

Western Montana is one of the examples in which there seems to be no perfect alternative available. There are an odd number of House districts, 25, in an area that would logically be a contained area in which the districts would be paired into the Senate districts. One of those districts will have to be paired outside the area. This is a dilemma similar to the dilemma throughout the State in many areas.

The final point I want to mention today is that it is necessary that all Senators will be running for re-election in 1984, and

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that is because the new Senate districts that will be adopted and the Senate districts which are in effect right now will probably overlap, so that if all Senators were not to rerun, there would be instances in which a citizen would be represented by more than one Senator or would not have any Senate representative. So, all Senators will be running for re-election in 1984.

That concludes the presentation that I have to make. I personally commend the Commissioners for their dedication and doing a job that was bound to create more enemies than friends. I thank them for the support they have given me throughout this process.

PRESIDENT STEPHENS: We will entertain questions. If you will, please confine the questions to the nature of general questions concerning Anne's presentation today. There will be ample opportunity to ask specific questions when the hearings are held in the House and the Senate. The hearings will be held within the next thirty days. If you have a question, would you also please first identify yourself before directing the question to either Anne or to any member of the Reapportionment Commission.

The Chair recognizes Representative Pistoria.

REPRESENTATIVE PISTORIA: This has been asked by many at home. Suppose the State legislative body turns down this redistricting. What happens?

COMMISSIONER WOODGERD: Representative Pistoria, as we read the Constitution, it only allows for recommendations from the Legislature and does not allow the Legislature to turn down the plan as such.

PRESIDENT STEPHENS: The Chair recognizes Representative Nordtvedt.

REPRESENTATIVE NORDTVEDT: Realizing that you need some kind of variation which in this case was plus or minus 5 percent from the ideal to get the job done, if one finds three, four, or five legislative districts all together in one or another part of the State, or 5 percent above the ideal or 5 percent below the ideal, are we to view this as chance?

COMMISSIONER PASMA: I think we all know what you are referring to. I believe the Commission treated the county in question fairly, and it was just chance that the House Districts there were over the ideal size. In my opinion, Representative Nordtvedt, you can view it any way you want to. I voted the same all four times, and I'd vote the same four more times, because you are wrong.

PRESIDENT STEPHENS: The Chair recognized Senator Aklestad.

SENATOR AKLESTAD: Mr. President, I have a question for Mr. Kuhr. I would be interested in what agreement there was since

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there were five members on the Commission, and particularly interested in knowing since there were three Democrats and two Republicans, how many of the decisions were actually made on a partisan basis across the State as I look at the map?

COMMISSIONER KUHR: I can't speak for the other members of the Commission. I can suggest that early on it became very apparent that our process would be a partisan process. I recently read through all the minutes. There were sixty-one contested motions that we passed during the hearing process. On fifty-seven of those, the chair voted with the two Democratic members of the commission--Pasma and Woodgerd. On two of the remaining four, the Chair abstained from voting, which effectively defeated motions that Mrs. Galt and I made. The remaining two were these: At Havre we had a question involved in numbering 219 and 220 and wanted to get those on the table. The Chairman felt it would be a good idea to get them on the table in the form of a tentative motion. He did vote with Mrs. Galt and I on that issue. The only other situation he voted with us was when we had a hearing in Helena and there was a request from one of the county officers to realign a county line so she could take care of precinct lines. The Chairman suggested it was a housekeeping matter and did vote with Mrs. Galt and I. There were only those instances that I am aware of. The ultimate approval was a 3-2 vote with the Chair voting with the Chair voting with the two Democratic members. Mrs. Galt and I voted against the plan.

PRESIDENT STEPHENS: The Chair recognizes Senator Aklestad.

SENATOR AKLESTAD: Question for Mr. Pasma. In light of the message that was just received from Mr. Kuhr, I am just wondering how sincere you are that you are willing to listen to other alternatives from the Legislature in the upcoming thirty days of this process since you weren't very willing to listen to plans from the people that this Legislature represents at this time.

COMMISSIONER PASMA: Just as sincere, Senator Aklestad, as you are in asking the question. I would point out in defense of Senator Mahoney the two Republican members voted 100 percent of the time to damn it and for some reason that's in the best interest of the State. Apparently, when the Democrats voted together, there's something wrong with that. Did that answer your question?

SENATOR AKLESTAD: Not really. Are you still willing to listen to suggestions and make changes?

COMMISSIONER PASMA: Of course. We have throughout the entire State, and we will still be willing to do it until the final day the plan is voted on.

PRESIDENT STEPHENS: The Chair recognizes Senator Aklestad.

SENATOR AKLESTAD: Are you willing to adhere to the wishes of

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the majority of the people? I am wondering, if the majority of the Legislators agree that a district should be different, are you going to adhere to those wishes?

COMMISSIONER PASHA: I would have to see the plan they propose before it is approved. If we worked on your suggestion, we would have an amazing conglomeration of districts. Each Legislator would have a different list pretty much of their own to protect his own interests, so that is the very reason that the Commission was established.

PRESIDENT STEPHENS: Hearings will be held by both the House and Senate, with intent to hold those hearings no more than a day apart to accommodate Commission members who may have extensive travel plans or have to travel a great distance to reach Helena. There will be plenty of notice on the hearing dates. You are invited to visit with Anne and staff and take a look at display maps.

The Chair recognizes Representative Bardanouve.

REPRESENTATIVE BARDANOUVE: There seems to be a possibility of a partisan tone to this hearing. I wonder how many times that the Commission voted together as a body. I think that has some significance. How many times did you agree on the proposals?

COMMISSIONER KUHR: I didn't count these votes. On all the other issues that we are concerned with, it became apparent to Mrs. Galt and I early on that the Chair did not vote with the Republican side of the Commission. I think it's apparent to all of you that any Commission will be partisan, when you have two Republicans and two Democrats. I express to you my grave concern when you have a process as we did and traveled throughout the State of Montana and look at the results of what happened on the contested votes. That's where we had questions and division, and when one side of the aisle feels it was an aborted effort because the Chair will never be on your side, that's not just difficult for the members of the Reapportionment Commission or members of this body, that's a real concern to the people of the State of Montana.

PRESIDENT STEPHENS: The Chair recognizes Representative Bardanouve.

REPRESENTATIVE BARDANOUVE: I have highest respect for you and Mrs. Galt. I wasn't meaning to give any hassle, but I think that it is important to realize that there were times it seemed that there were certain Democratic Legislators eliminated from the legislative process and I never did hear in the press or anywhere about eliminating completely certain Democrats from the Legislature. Why was there not, at any time, a great hue and cry about getting rid of Democrats?

PRESIDENT STEPHENS: I believe that is a philosophical

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question, and I think you have made your point. If there are no further questions.

The Chair recognizes Senator Keating.

SENATOR KEATING: Mr. President, I would like to give a public acclamation for Anne Brodsky for what she did. She was between a bit and a hard place. Whenever I asked for anything she was very willing and helpful. I thought she did an excellent job considering the position she was in. I'd like to hear it for Anne.

PRESIDENT STEPHENS: If there are no further questions. The Chair recognizes Senator Hazelbaker.

MOTIONS

Senator Hazelbaker moved that the joint session of the Forty-eighth Legislature be adjourned. Motion carried unanimously.

Joint Session adjourned at 2:13 p.m.

Senate resumed at 2:18 p.m.

ANNOUNCEMENT OF COMMITTEE MEETINGS

Announcements of committee meetings were made.

Upon motion of Senator Hazelbaker, duly carried, the Senate adjourned at 2:24 p.m., until January 6, 1983, at the hour of 3:00 p.m. Motion carried.

STAN STEPHENS
President of the Senate

JOHN W. LARSON
Secretary of the Senate

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MINUTES OF THE MEETING
State Administration Committee
Montana State Senate

January 20, 1983
10:30 a.m.
Reapportionment Commission

SENATOR STORY: We welcome the visitors. The first thing I want to say is that this committee will always meet at 10:30. It may have been posted otherwise in some areas, but this is our permanent hearing time from now on. The Secretary will please call the roll.

SECRETARY. Senator Story, Senator Hammond, Senator Marbut, Senator Tveit, Senator Manning, Senator Stimatz, Senator Towe. All present.

SENATOR STORY: The committee being present, we will open for business and the business this morning is reapportionment. We are required by the Constitution to make a reply to the Reapportionment Commission. The vehicle for making this reply is Senate Resolution No. 4 which is being considered by Senator Kolstad on behalf of Senator Stephens. If you please.

SENATOR KOLSTAD: Mr. Chairman, members of the Committee on State Administration, my name is Allen Kolstad, Senator from Liberty County. It is my pleasure to represent Senate President Stan Stephens this morning. He was called out of town and couldn't be here. It is my privilege to present to you Senate Resolution No. 4 which is a simple resolution of the Montana Senate considering the Montana Reapportionment Redistricting Plan. On page 2 of this plan, line 6, Resolution providing conclusions and recommendations and modifications of the Reapportionment plan as it pertains to the proposed Senate Districts. Now, those recommendations and modifications will come as a result of the testimony before this committee today. And while much of it probably will be received today, I respectfully request, Mr. Chairman and members of the Committee, that this hearing remain open for several days for the purpose of providing you with additional testimony, much of which is being researched and not immediately available. With that, Mr. Chairman and members of the Committee, I respectfully submit to the Commission Senate Resolution No. 4.

SENATOR STORY: Thank you, Senator Kolstad. This resolution will be acted on the Friday after next, the 28th, which gives us time for floor action and we will take any testimony between now and then, that date. We would appreciate written testimony and consider it when we make our recommendation. Before we continue, could I see a show of hands. How many people are here to speak simply in favor of the present reapportionment plan as presented to us? Just one? Could I see a show of hands so I can tell how much time? Four.

[illegible]

[illegible]

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we will continue hearing from them until we have heard from everybody and then anybody else that you have that likes what's going on in conclusion. But first, would you like to say a few words?

EUGENE MAHONEY: Mr. Chairman and Members of the Committee, for the matter of the record, my name is Eugene Mahoney. I am Chairman of the Reapportionment Commission. As you know, we are a constitutional commission. The Constitution provides that the majority leadership appoint two people and the minority leadership appoint two people, and they in turn have twenty days in which to select a fifth member who automatically becomes the chairman. In the event they cannot agree on a chairman, then it becomes the duty of the Supreme Court to appoint the chairman, the fifth member. I was appointed by the Supreme Court. I might say that we have held extensive public hearings. Every meeting we have held has been an open hearing for everyone who cared to come. We listened to everyone that wanted to testify before this Commission. We tried to keep everyone in their respective areas that were affected by that particular hearing informed prior to the hearing by sending the alternative maps to the Republican State Senate Committee, the Democratic State Senate Committees, who in turn filtered them down to the local committee. We also gave copies to the local legislators in both the Senate and the House. And our research staff--Anne Brodsky--I think has done a marvelous job in trying to inform the people in the respective areas. She has spent much time out in the field formulating this plan to get the feeling of the people, the planning and zoning commissions, the election of officials, the clerks and recorders, the county commissioners, and other interested people. I know that we couldn't make everybody happy with our plan. I think it is a safe thing to say that even though we disagreed at times on the Commission, that we agreed more times that we disagreed. But this being a political process, if it was a 100 percent agreement, I don't know how that could be accomplished. It hasn't been. But I think our disagreement has been a sincere disagreement. It's a horse race. You've got several different opinions--that's why you've got paramutual betting. And all the members of the Commission, I think, have made a sincere and honest effort to do what they, in their own minds, with the information they had for the good of the entire state in making up reapportion districts. Now, necessarily, because of the nature of Montana, we had to start at the outside areas. You know up north we have Canada, and North and South Dakota, Idaho on the other side and Wyoming on the south. We had to start from the outside and work in. Now I might say, and I'm sure I'm speaking for the entire Commission, that we're not happy with some of the results that resulted in Western Montana Senatorial districts, and you will note from our report to you that we have specifically asked for your recommendations in this regard. It has been stressed through the 18-month long period that this plan is still a tentative plan. It does not become final until the plan is presented to the Secretary of State, and then it becomes law. I hope my work has not been an exercise in futility because there are lawsuits now pending in the Supreme Court, but that's up to the courts to decide, whether or not that 18 months has been futile or not. But it does to say that I believe our staff has worked very conscientiously. I think if there could be one criticism made, it would be that we spent too many alternatives out in the field and too many days that we tried to make a most effort to reflect the feelings of the people in the respective areas. I'll close by saying we will not please everyone, but I think we have come up with a pretty fair

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plan, and now we certainly respectfully request your recommendations during the time you have under Constitutional limitations, so that we can present the final plan to the Secretary of State. As you know, initially it's up to us to determine the size of the Legislature under the Constitution. Although we could not have less than 80, nor more than 100, the Commission did agree and decide to have 100 members, and that automatically meant that we're going to have 50 Senators. So, that's the plan that we proceeded upon, and that's the plan that's presented to you. I don't know, do any of the other members of the Commission have anything to say to the Committee now, please feel free to say so now if you'd like. I want to thank you for the opportunity to address you. Thank you.

SENATOR STORY: Thank you, Mr. Mahoney. Are there members of the Legislature, proponents, who have other hearings to be at?

SENATOR DANIELS: Mr. Chairman and Members of the Committee and Members of the Commission. I am Kermit Daniels. I represent the present Senate District 14, which I might say is not the ideal either. But I would speak particularly here in behalf of the proposed combination of districts 49 and 50 which would constitute Senate District 25. I realize that that's the first option and has drawn some gasps of amazement from some of the people, and my testimony may be colored by the fact that I have a home in Swan Lake But nevertheless, I would point out that the proposed, and let me make it clear at this point, that this is my second choice. My first choice, and I don't want to burden you unduly with that, would be with Philipsburg that is with Granite County, which would be 49 and 68 together. But in behalf of the proposed Senate District 25, I would point out that there is a community of interests with Bigfork and Deer Lodge. We are both interested in tourism. We want to attract tourists. We've got tourist facilities In Deer Lodge, we have the Grant Khors Ranch, the Towe Car Collection, we have the old Montana State Prison and we have numerous tourist facilities in there. And they are building a new motel in there at the present time. I found out that in Bigfork they have the Summer Theater there, and it's a beautiful, lovely area. I would think that Bigfork would really prefer to be in a district with Deer Lodge than be totally dominated by the Kalispell area. And I think that, again, I would think that the timber industry there are sawmills in the northern portion of the proposed District 25. We have sawmills in our area, we have a great number of loggers. We have the community of interest in agriculture that is present and that we have, and so I'm not at all appalled or even doubtful about the proposed district. I think that it's much preferable to the present district that I represent. We have a good highway that goes all the way from Deer Lodge; we go up through Avon, and we go through, Helmville's only a short distance off, Ovando's only a short distance away and then we get into the portion of Missoula County for a while; then we're back into the Lake County area, into Swan Lake, into Bigfork. And the road is much preferable to the present road where when campaigning this fall, why you go from Deer Lodge and you go down to Anaconda, you go to the Flint Creek Hill and Philipsburg, you go up to Drummond, then you have your choice to go either to Deer Lodge on the right hand or you go up to Helmville and Ovando, and then you're confronted with when you get to Seeley Lake. And then you come back into Deer Lodge, and then you go to Lincoln and over here to Helena And it's a much more complex district than

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the proposed district 25. In fact, it would make it much simpler as far as a guy campaigning. It's kind of a refreshing drive in some respects. But when I come over here into Helena and knock on the doors and tell them I'm from Deer Lodge and running for the Senate, they think I'm an escapee or something. I don't know. They have some reservations. And again, I would point out that's my second choice. My first choice would be with the Philipsburg people. They don't particularly care about that, but I think they might be persuaded. And my third choice, I don't want to be in a suburban district with the people of Helena. I think that's the last choice. If there are any questions or anything I could do to enlighten the Committee or the Commission, I would be happy to attempt to make the effort to anyway.

SENATOR STORY: Thank you. Are there further people who wish to speak in behalf of the present plan? Senator Himsl.

SENATOR HIMSL: Mr. Chairman, Members of the Committee and Members of the Commission: For the record, I'm Matt Himsl, Senator, District 9, Flathead County. This district of Bigfork actually is not in my district, but it is in my county and we do have a concern about its placement. And I don't presume to tell the Commission what to do, but invite and urge them to reconsider the position taken on the original plan and hopefully put the House District 50 and House District 51 into one district--Senate District 26. My reasons are as follows. These areas are both the districts, both the Bigfork district and the Deer Lodge District, they've both got good people in them, so that's not a question of appraising them. But their lifestyles are entirely different, and I'd like to share that with you in perhaps a little different way. Bigfork is an area of exotic farms. We've got the cherry orchards, we've got the Christmas tree plantations, we've got the seed potato growers, we've got growers of lentils, and we've got growers of mint crops, something that's quite different from anything we have in any other part of the state. It's an area of artists, of craftsmen and retirees. Really, it's a kind of Mel Tillis/Joan Baez type of a community with, well, you can put Grandma Moses in there, too. That's the type of area it is. It's really a Bohemian type of village, beautiful place, a quiet lifestyle that those people have. It's a retirement type of community, it has a whole different lifestyle. If the sun is out and the fishing is good, they'll live in peace and harmony. And that's the type of community it is. I've been around long enough to understand something about the Deer Lodge community, and I don't say this disrespectfully, but it is kind of a Jane Fonda, some kind of a Marlboro Country. It is an area of rugged individualists that don't run from combat of any kind. That's true--it's kind of a combat zone. First they fight the prison, then they fight for the prison. First they fight the railroad, then they fight for the railroad. Then on the state appropriations thing, they fight the state for the labor- given institutional value, we call it. Their whole lifestyle is different, their whole concept of community life is different. And if they don't have enough to fight, then they always have the Fish and Game to take care of. Now I mention that because that's the history of that community. I don't say it disparagingly but only to point out that their composition, their lifestyle is entirely different from that of the Bigfork area. Now if you combine Bigfork, 50, with 51 you put the lake shore area tied in with Polson. And that's a community of harmony of interests. The only problem you might have there is that it does put the Indian Reservation in a part of that. But I can assure

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you and members of the Commission that there are more Indian features that are painted, carved, and, well, they paint them and sculpture them in Bigfork, than there ever are many Indians in the Polson area. And it is a harmonious arrangement which I am sure will satisfy those people very well. So, I would suggest in the hope that the Commission I am sure has the wisdom, the capability, and I hope the good judgment to put those two areas together, and I can't tell you what effect it might have elsewhere, but I can assure you that there's a harmony of interests in that sort of a structure which you won't have in any other. Thank you, Mr. Chairman.

SENATOR STORY: Thank you. We really try to take testimony from those that want no changes in the plan first. Senator Lynch.

SENATOR LYNCH: Mr. Chairman, Members of the Committee and Members of the Commission: It is with some reluctance because I am not here as a proponent for the entire program, but in visiting with some members of the Commission, then I told them how much I accepted and appreciated the district insofar as both of my House members are still, will be both my House members, and their reply was so very few people like any of the plan that we would appreciate your coming and testifying to that effect. I appreciate the fact that my district has changed the lease insofar as you've had to move to consolidate. They lost a House district, but that certainly it's the same district I represented as a House member for years. and both the House members are still in my Senate District. I would hope, as I am sure all of us in this room, that you would accommodate those problem areas and certainly I would hope that you would try to accommodate the problem area of two of my fellow Senators which I'm sure you'll hear from in opposition to the proposed plan. So, I'm just here to say that not everyone is totally dissatisfied, and in my particular Senate District, I'm certainly in support.

SENATOR STORY: Thank you. Further people that like it. Yes. Senator Norman.

SENATOR NORMAN: Mr. Chairman, Members of the Commission, I'm sure your considerations are and must be broader than Missoula County, but I would just like to speak in favor of the present plan for the Missoula County. Missoula County now has four Senators. Actually, we have four and a half and a half. The population is drained away to the east and the west, and there is much talk already before this committee of disparity in lifestyles and various voters and how they should be grouped together. Well, I would encourage you, and this plan perhaps is the best that can be done, to maintain county lines as much as possible. County government is involved, and there are many things involved, and a county even up at Seeley Lake and out at Frenchtown, they still belong to Missoula County. They pay taxes there, they well know it, that is their trading area, and so if you keep draining population away from Missoula County, you may have a very undesirable effect. Missoula County will come to dominate the surrounding small counties. You will have more Missoula Senators than you intended. And that process is already underway in Mineral County even in the House seat. So, as you borrow population from Missoula County, realize that with it goes political clout, and the surrounding counties are going to lose their voice, at least to some extent. We now have 79,000 population or above there, and surely should be entitled to five Senators, but accommodations need to be made and have been, but this plan probably best accommodates everyone. So I would encourage you

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to support the plan you have now and give us four Senators wholly within Missoula County. Thank you, Mr. Chairman.

SENATOR STORY: Thank you. Is there anyone from out of town who's come great distances to speak in behalf of this? What we're doing right now, Senator Mazurek, is listening to people that like it the way it is.

SENATOR MAZUREK: I'd like to testify to that. Mr. Chairman, Members of the Committee. I am Joe Mazurek, Senate District 16 here in Helena. Very briefly, I would like to express the support, or my support, for the plans that currently exist. I think at least in terms of the division of the House districts here in Lewis and Clark County there was, I think, bipartisan support for that. There was some disagreement over the alignment of the Senate districts. I think both Representative Donaldson and I have testified to proposed alternate plans, but the committee, as I understand, is still looking at adjusting those. But in terms of the House districts, the numbers, and their location I think there was generally bipartisan support here in Helena. Thank you.

SENATOR STORY: Thank you. Further proponents for the existing plan.

SENATOR BERG: Mr. Chairman, Members of the Commission and the Committee. I'm Harry Berg, Senator from District 21, Great Falls, and I would like to go on the record in support of the present or the proposed plan. It doesn't go without some difficulty in Great Falls and in Cascade County, as you know. Part of our county has been emasculated, I guess, from the rest of the county. It has been that way in the past, and I guess it will continue. But I think that given the circumstances, it's probably the best we can do. Additionally I know that there have been comments in other areas about the plan. I'd just like for you to know that in Great Falls, in the city itself, with the reapportionment of the Senate Districts, it does turn out that there are three of us that are presently State Senators from Great Falls and will be living in the same district. Whether that makes any difference or not, I'm not sure, but I'd just like to point that out. Thank you.

SENATOR STORY: Thank you.

SENATOR FULLER: Mr. Chairman, Members of the Committee, Members of the Commission. I'm Dave Fuller, Senate District 15 in Helena. I just wanted to echo what Senator Mazurek said, Mr. Chairman. We're pleased, and there was some bipartisan support here for the plan the Commission has adopted. I understand there may be some alterations which they're considering in the House districts. In either case, as I understand it, from my perspective I think it looks fine. Thank you.

SENATOR STORY: Thank you. Yes.

SENATOR MOHAR: Mr. Chairman, I'm John Mohar from Senate District 11. In consideration of the loss in population of my corner of the state, I think that the Committee, the Commission, did a very good job in reapportioning Lincoln County, including most of the county into the new Senate District 1. Thank you.

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SENATOR STORY: Thank you, Senator. Anyone further? Yes, Mr. Lawson.

JOE LAWSON: Mr. Chairman, Committee, I'm Joe Lawson, the Executive Secretary of the Montana Democratic Party. And the party has been following this particular reapportionment from the beginning as my counterparts, the Republicans have. A lot of the press has concentrated on the disagreements within the Commission and within areas. I think it's important to realize that, as Senator Mahoney said, there was far more agreement than disagreement. Most all of the urban counties in Montana had bipartisan agreement. We saw that happen in Kalispell, Missoula, Helena, and Great Falls. There was bipartisan agreement in Gallatin County, but the Commission couldn't go along with that particular recommendation for what it did to some of the surrounding towns. Only Billings was the only place where you had Democrats and Republicans really lining up on different urban plans. And I think that's what has spoken well to the process. It's been an open process. There's been many changes, as Anne Brodsky can attest to. She's got stacks of options. One other thing I'd like to make sure is that the Democratic party is not beholden specifically to some of these Senate adjoinments. We do support the House districts as they are. But the Senate adjournments we are also not pleased with the Bigfork problem. But the thing that the Committee has to realize is that when you start to realign those, there are going to be changes. Sam Reynolds of the Missoulian wrote one of the most amusing editorials about this and called this, this Bigfork to the outlying,, a supermander. It went beyond gerrymander to supermander because they could leap over mountains and do everything like that. And he's right. I would hope, through, that Mr. Reynolds would realize that there are just seven options, and if he gets rid of those supermanders in the western districts, one of the negative implications for Missoula County is that they go from 4 to 3 state senators totally contained within their county lines, so my point is that there are the things that the Commission has had to wrestle with, and this Committee will have to wrestle with. But overall, we think it's an excellent plan and one that will serve the people of Montana best. Thank you.

SENATOR STORY: Thank you.

REPRESENTATIVE JENSEN: Mr. Chairman and Members of the Committee. I'm Jim Jonson, Representative from District 66, Billings. I am here to support the district plans for Billings as they were prior to yesterday's State Administration hearing in the House. I would like to say I am a Democrat in this district that has been eliminated by this process and I have not squealed. However, there was I guess for the benefit of the Committee, one representative did not live in his district as newly aligned, and has asked to be included in that district. And I think that that precedent then would force me in fact into the same request of the Committee. So I am here as a proponent of what has been done, if they leave done what was done, but if they do not, I would submit copies of proposed change in what are on my map E, I, J, and F districts which are 91, 93, 94, and I'm not sure of the other one. For the Committee, Mr. Chairman, may I. I do want to make it clear that the only way in which I would encourage this realigning would be if there are any other changes made. Thank you very much.

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SENATOR STORY: Thank you. Further people that like it the way it is. Be quite brief if you can.

REPRESENTATIVE LYBECK: Yes, Mr. Chairman, Members of the Committee and to the Commission. I'm Representative Ray Lybeck from District 16, the Bigfork area, one of the areas we're discussing this morning, and I would just like to say I would agree with what Senator Himsl told you earlier, that I believe the districts of Bigfork and the Polson one would work very much more compatible than maybe going down to Deer Lodge. Thank you.

SENATOR STORY: Thank you. Is there anyone else who wants to speak about not changing it?

JANET MOORE: I m Janet Moore. I'm Director of Public Affairs for the Seeley Condon Chamber of Commerce. I would like to speak in support of your plan to keep us, and we hear Seeley Lake mentioned a lot but we never hear of Condon. It's like it's not even in Montana, but it is, and it's up there by the Lake County line, and we would like to stay in Missoula County. Thank you.

SENATOR STORY: Thank you. If there are no further people that wish to speak for maintaining this plan as it is, then we will turn and ask those that suggest changes. And I would first like to start with legislators that have other hearings. If you'll proceed, Senator Haffey.

SENATOR HAFFEY: Mr. Chairman, Members of the Committee and Members of the Commission. I have just a few pieces of information. My name is Jack Haffey, and I represent what is presently Senate District 45. I just have a couple of pieces of information that I would like to share with you and some concerns and then suggestions. What I would like to present to you I think will not meet, or would not meet with disapproval by many of those who have supported the plan. There are people here from Granite County who I think would suggest to you the same things I'm about to suggest. They are first of all that Deer Lodge County, which contains the Senate district that I now represent in the 1980 census has about 12,500 people. Granite County has 2,700 people. As I look at that, and as I look at what Senator Himsl referred to as communities of interest, I perceive not only the numbers as being compatible with what will be two House districts from now until 1990, but the community of interests between Granite County and Deer Lodge County as being one so that that would really mean that there are about 15,300 people in those two counties, using the county lines, that would form two House districts. Presently under the House district plan, House Districts 68 and 69 would form one compatible Senate district. And I'm suggesting that that would be very appropriate for Deer Lodge County and for Granite County. Deer Lodge County, if something like that is not done, will be in the position of a probability of not having a resident who serves in the State Senate even though the county's limits itself have more than enough people to make up one and one-half House districts, and that concerns us. Anne Brodsky your staff person, has a number of alternatives which could remedy the situation under the tentative plan for Deer Lodge County which calls for one of Deer Lodge County's House districts to be combined with the Silver Bow County one while the other Deer Lodge County House District is combined with total Granite County and has some [illegible] which would remedy that, which would call for combining House Districts [illegible] proposed into one Senate district, which would be Granite County and Deer Lodge County. And I think Anne's, the tentative cautions for your

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consideration, would cause a limited ripple that would move around Western Montana in a manner that would address also the major problem you've heard about and continue to hear about in terms of the long non-contract. Bigfork to Powell County or Deer Lodge District. And so my suggestion to you is, and my recommendation is that you consider as you complete the Legislature's consideration of the Commission's plan and as you the Commission complete your work and submit it, that one way to remedy the Bigfork/Powell County thing is one that will also accommodate the interests of the people in Granite and of Deer Lodge counties. And I would appreciate your consideration of that. A third point is that, and I would defer to Senator Stimatz who serves in the Senate State Administration Committee, is that the ripple as it would go around, as Anne Brodsky has in one of the options, would effect Silver Bow County and its five districts, but I think that can be accommodated as well in a manner that would not meet with disapproval of the people in Silver Bow County. Thank you very much for your time.

SENATOR STORY: Thank you, Senator. Further legislators first. Senator Aklestad.

SENATOR AKLESTAD: Mr. Chairman, Members of the Committee and Members of the Commission. Since you are involved in this, I'll pass you out a map. I am State Senator Gary Aklestad, representing Senate District 6, in North Central Montana. I am here to oppose the, which I believe is the proposed Senate District 5, which would encompass Glacier, Toole, and Liberty Counties. I am here opposing that Senate District on the grounds that I don't believe the Commission followed the criteria which was established, which is as I understand in the rules in which they were operating under. The proposal that I have is not a new proposal. It is a proposal that the Commission had adopted through their proceedings and only changed at one of the very last minutes and one of the very last meetings due to political pressure or whatever. With your indulgence, I would like to at least show you on the map where the change would be. I would like to emphasize that with this change there is no ripple effect. We are strictly just changing Senate Districts around. There is no effect whatsoever to the plan. The proposed change, Mr. Chairman and members of the Committee, would be to merely (showed on map) take this line here, move it to Interstate 15 to Conrad and over here. That proposed change would put this area and this area in one Senate district and would put this and this together in one Senate district. There are five main reasons for doing that, which would follow the criteria the Commission was supposed to be operating under. 1) As it exists, the reservation is divided as far as Senate districts. This and this is a Senate district, and these two are a Senate district. The reservation is divided. This would put the Indian reservation back together for a Senate district which is part of the criteria which is part of the rules in which they supposedly operated under. 2) We would be putting back a small town and county seat, which would be Cut Bank in this case, at least back for the Senate district. Right now it is divided as a Senate district with this narrow tip going up into there. If we put it back together, move this line, this area would be in Cut Bank; Cut Bank would be put back together for a Senate district which I think follows the criteria. The proposal that you have on your desk, it would also follow the criteria of keeping the existing districts more than that that we have now in our Senate districts than before. Right now, this Senate district line [illegible] does encompass this area. Otherwise it's going to be [illegible] across the northern part of Montana. Also other

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the criteria, the mileage and travel in the new Senate district proposed is far greater, going from here to Joplin, Montana, to the Continental Divide and going to the Canadian border down to Fairfield is less distance, less square miles. In this particular area, as far as people and travel, and getting together the north and south more than it is east and west because of I 15 is traveled from the Canadian border down to Conrad and Great Falls, so the people that go north and south have a far greater pace than east and west. Last but not least, I just wanted to emphasize that there is no ripple effect to this plan--you are merely moving one line and moving it over here, and the House districts so they make a Senate district, as you see on the map--no ripple effect. With that, Mr. Chairman, I would submit that this plan follows the criteria in which the Commission was supposed to operate under far closer than the proposed plan would. And I would also like to emphasize that this plan was adopted, this plan was adopted by the Commission up to its last hearing or two. Thank you, Mr. Chairman.

SENATOR STORY: Thank you. Further testimony?

SENATOR SMITH: Mr. Chairman, Members of the Committee, Members of the Commission. Senator Ed Smith, District No. 1. The area way over in Northeastern Montana, if there are any changes, the only changes that I would suggest and that is that we get closer to the other boundaries in the West. The only other way we can go, and that's North Dakota or Canada. You will note I have handed out testimony to the Committee members. There are probably some changes as we go through it, and I would appreciate it if you would make those changes as we go. I am appearing before this Committee because I'm not appearing on my own behalf because I'm sure that the district that is there now, if I decided to run again, it would have very little effect on my running or anyone else running from that particular district. This is the third time that I have appeared before the Commission to express my concerns on the way Senate District No. 1, presently District No. 20 was designed and notice the word designed. I first appeared in Helena before the Commission went on its road show and expressed my concern or the concerns of my constituents in Northeast Montana. Next was in Wolf Point, and now I'm here before you today and I expect the same results today as we received at that time because some of the Commission members have said that any of us that would cause a ripple effect, that there would be little chance for any changes to be made. However, according to today's issue of the Great Falls Tribune, one of the Commission members urged that the legislators come up with alternatives. I guess my remark would be how stupid can that be, because the Reapportionment Commission and staff spent 18 months coming up with the plan that they have today, and with legislators with their busy schedule, how in the world could they come up with alternatives. Mr. Chairman, now I will address my objections with regards to my District No. 2. I'd just like to go to the map and point out how the district was prior to this plan. Prior to this plan the districts were designed, were [illegible] and in a north and south direction. You will note this area [illegible] the Missouri River. All of this [illegible] District 1. This district was mostly main east and west Highway 2 [illegible] District No. 2, [illegible] people were moved from this area north of the

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Missouri River and put into the present Senate District No. 21. I'd like to also point out to you that there is another problem in the Senate and that is that you have Senate District No, this House District here, these two are House districts. This would be the Senate district and this small area here is the city of, town of Sidney. It certainly would have an adverse effect for rural legislators to be elected. And, as you have noticed also in the press, that rural legislators will have a harder problem of being elected. And regardless of what some of our city friends think, rural Montana is certainly necessary to the way Montana's economy is. I'd also like to point out that the 2,907 people were taken out prior or just at the beginning of when the State was being reapportioned, but we were next to the last be be addressed, in the meeting right at the end of the hearing process, was just before the meeting in Havre and then the final meeting in Wolf Point, just a few days before the final decisions were made on how the State would be reapportioned. When this was done, I feel that it violates the very criteria that the Constitution directed the Commission to follow. And you will note on page 11 of this book. it says that consideration shall be given to existing governmental lines. These include such things as county, city, Indian reservation, precincts, and school district lines. I would like to have you note that now the Indian reservation I'll address that first, has been divided into four legislative districts. You will note there is a very little corner up there where it has any connection with that other particular area. You will note that it is now that one portion that I just mentioned in eastern Roosevelt County, the eastern portion of the Indian reservation, now is put into the area of basically Richland County which goes clear down to the line--about 17 miles from Glendive, Montana. School district lines have been broken. As you will notice, some of the school children when you go way up in that corner, some of those school children go to Plentywood, some of them go to Medicine Lake. That is the the two areas the districts they go to. They have no activities in their area. 2) In the book, geographic boundaries will be respected, the book states. Another natural divider is the Missouri River. Again, I say this is a violation because as you will note, they followed the Missouri River all the way from the mountains til they got to a point at Brockton, Montana, then they disregarded that as a boundary. 3) Whenever practical, consideration shall be given to existing legislative district boundaries. As I have stated earlier, because the boundaries run in a north and south direction, they could have easily changed that boundaries by just a little westerly movement of the district and pretty much kept it in its present reapportionment boundary. 4) Community of interests, and again referring to the book communities and that's on page 11. Communities of interest will be considered. With this criteria, the Commission sought to create homogenous groupings. This, I think, was a violation because communities of interest tend to be defined by trade areas, and states organization, communications, and transportation networks. Again, a violation of the criteria. And as you will note on the map, there is only one road that connects those two districts and I believe it states on page 12 of the book that they disregarded that. And that is Highway 16 and the Missouri Bridge that connects the two districts. Trade area, again east and west, you'll notice that Highway 16 comes from Plentywood on down to Culbertson.- Highway No. 2 does go on to Sidney, but you usually go to the west which then goes to No. 2 over to Wolf Point and then again the trade ways run from Bainsville to Wolf Point, 16 this way 13 that comes out of Wolf Point, or out of Sidney and comes down to Wolf Point. Again in regards to association, organi-

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zations, county commissioners association, there's a five-county commissioner association. We have county planning districts that stay on the north side of the river, conservation districts, mental health districts, health associations, rural water districts, school activities, types of agriculture from the north side of the river is definitely different, there's no sugar beets, very little irrigation on the north side of the river compared to the south side of the river. I could go on and on. Communications--I didn't bring the book with me, but I did present it to the Commission when they were in Wolf Point. The Northeastern Montana telephone coop that goes to the North Dakota line and stays on the north side of the Missouri River goes up into the Glasgow area. Northeastern Montana Bell's book for Northeastern Montana, that is the book for northeastern Montana, there are no points in the telephone book across the Missouri River. Transportation again, highway and railroad--there is a railroad that goes from Opheim to Bainville and that connects on to the main line that goes from Bainville on to the west coast. Their transportation problems in Richland County are much different from those in Sheridan County because we have a branch line that we have problems with. However, I understand that they do have a branch line from Sidney to Williston. Again as I mentioned earlier, highways are definitely of concern. When people in Senate District 1 became aware of the changes, they contacted me, they asked me what they could do. I suggested that they write to the Commission and also circulate petitions, and it was they and not I that circulated the petitions. Several hundred names were presented to the Commission at the Wolf Point meeting and I would like to add that in a rural area such as that as much as that's scattered out, you don't do that in a few days. And that's what they did. They collected several hundred names on petitions. The petitions from eastern Roosevelt County was delivered to the Commission at their Wolf Point meeting. And I believe that you do have the copies of those petitions here. You can certainly look at those petitions. The one I was asked to deliver to the Commission at Wolf Point was from eastern Roosevelt County. I understand that Representative Solberg presented those that were collected in the Daniels County and northern Roosevelt County. I would also like to point out in the book on page 12 that it states citizens of northeast Montana told the Commission that county boundaries were not reflective of the type of communities of interest in the area, and then it went on to say that arguments were made in support of the opposing positions. I can't even get what that comment really meant, but I think what it meant and that was that there were some people who went in support of the commission's position and opposed ours. And I would like to add there were three people there that opposed us not changing--they supported the Commission's proposal, that was the Secretary of the town of Sidney and two past Roosevelt County Democratic Chairmen. There were no sheets provided at the hearing such as we have here. There was a large number of people there, but there were no sheets that I could find that were there to see whether you came in support or in opposition to their proposed plan. I would like to point out that what happened when the 7,900 people were taken out of the original district and that population was placed across the Missouri River, it made a ripple effect and when it got to the central part of Montana, you had a pretty good high weight. And I am sure that other legislators here today are going to speak on how that it put two senate districts and several House districts into the same district. I realize that the reapportionment is a tough job and I will say this and I realize it sounds a little harsh, but I would like to say that one would have to wonder if they didn't realize that what was done was for

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partisan political reasons. It was to do two things. We're going to make Republican legislators, as was mentioned earlier, to eliminate rural legislators. To back up my statement in regards to partisanship in the reapportionment plan, you will note, and I have copies of two articles out of the Great Falls Tribune. An editorial on January 16, I won't read the editorial, but it does point out some of the partisanship that was brought into the reapportionment of the state and I have one here in today's paper, January 20, where the Chairman of the Commission admits that there was partisanship in it. In closing, I would like to say that I have had several people approach me on possibilities of court action. My comment to them has been I don't know what chance you would have when it was the Supreme Court which you would appear before if you opposed it, what kind of a chance you would have, because it was the Supreme Court that appointed the fifth Commission member. Thank you, Mr. Chairman, for your time. If there are any questions later on, I would be more than happy to try to answer them in regards to how I felt that my district was reapportioned.

SENATOR STORY. Thank you. Senator Etchart.

SENATOR ETCHART: Mr. Chairman, Members of the Committee and Reapportionment Commission. I am speaking in opposition to the plan as presented, and basically I am here to endorse a plan for the northeast corner presented by Representative Chet Solberg. In my handout, if you will look at it, the first page is a letter which I sent to Chet after he presented the plan and I had a chance to look it over. And it outlines my points of support for his plan and where I feel that it's superior over the plan presented by the Commission. And then the second sheet is a copy of the present House and Senate districts as we now have them. And the third sheet has the Solberg plan. I would like to point out that if you will revert to the third sheet that the Solberg plan would take the four representative districts in the northeast corner and confine them to the four counties north of the Missouri River by adding the north past of McCone County, which the northwest corner of McCone County naturally goes into Glasgow because the Missouri River is bridged at Fort Peck Dam, so the northwest McCone County goes into Glasgow. Northeast McCone County goes into Wolf Point at a bridge just east of Wolf Point. So those people, we make it very compact, two senatorial districts with the western boundaries in the western Valley County. And we maintain the basic integrity of the Missouri River and we follow the historical precedent of creating the highline as an entity and as Senator Ed Smith said, in all of the previous reapportionments, and I have gone through four of them, but in every case the districts started at the northeast corner with the Missouri River on the south, Canadian border on the north and North Dakota line and worked down the highline, adding enough people to keep compact districts. I feel that the error in this plan is when we violated the Missouri River in Roosevelt County and added those north of Richland County. In so doing, they worked down the Yellowstone River and instead of going counter clockwise, they went clockwise, down the Yellowstone River, the ripple effect becoming a tidal wave. Basically, I don't have any final answers, but for the northeast corner, I think the Solberg plan could be implemented and is very superior to what we have.

SENATOR STORY. Thank you. Senator Van Valkenburg.

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SENATOR VAN VALKENBURG: I will try to keep my comments very brief. I have put a lot of comments into the record already, and I hope the Committee will have access to this. With respect to Senate districts in Western Montana, I wish to go on record in opposition to the Commission proposal. I do that with some reluctance because the proposal is, I think, the best proposal for Missoula County and even more so for Democrats in Missoula County. I guess I have a self-interest in both those areas. However, I think it is incumbent on all of us to look beyond our self-interests. I too see problems with respect to the plan that some change could resolve. It may create some problems for us in Missoula, but I think in the interests of the State we will all be better served. In particular I would suggest to you that you recommend through the Joint Resolution process that proposed House District 66 and 67 in southern Ravalli and Beaverhead Counties be combined to form a Senate district. The effect of that very significant change in the recommendation would be to allow proposed House District 50 to be combined with a district to its immediate west, House District 51. That, I think, would solve one of the more serious problems with the present Senate districts. In addition, it would allow proposed House District 49 in Powell County to be combined with proposed House District 68 in Granite County essentially. Now, while that does not meet completely with the desires of Senator Daniels who testified as the first witness, it does meet his second objection. It meets the objection of Himsl and folks in the Bigfork and Flathead County area. It will have the effect of preserving four Senate seats within Missoula County. They will have to be shifted around somewhat--there are various proposals. I know Senator Marbut has come up with his own. They may well work more to the benefit of the Republicans in that area. On the other hand, the citizenry, as you know, has got its opportunity to exercise its opinion at the ballot box. But, what it does do is to solve three problems and create one, and I'd be quite frank about that, it does create one, the combination of southern Ravalli and Beaverhead. But that proposed Senate district would, in my opinion, really have more of a common interest between its House districts than the problems that are created in three other areas if the Commission's proposal were to be adopted or even amended to reduce the Missoula area to three Senate districts and splitting off three House districts to various rural counties. Ms. Brodsky, I think, is familiar with the specifics of my proposal and I am sure can respond to Committee questions as to how that might be implemented, and I will certainly be available in the future to respond to Committee questions too. Thank you very much.

SENATOR STORY: Thank you. Are there any other legislators who wish to speak?

SENATOR ECK: I'm Dorothy Eck, from Senate District 39. I must say that about my own district I maybe have grounds to complain because mine is the district in the State that has the largest deviation from the normal. I am not complaining a lot about my district, however. It's a city district that's built up, stable, it's not growing, and I don't see nearly as many problems for that as I do with the rural districts in Gallatin County which we still contend are larger than they should be. What I would like to propose today, though, is some changes in Senate districts in Gallatin County, and I speak for the County. The first is the rural area to the east in Gallatin County which makes up House Districts 76 and 79. They are currently in one district, that district being represented by Paul Boylan. It's a growing district, it'll be smaller geographically than it is now, but it would make a lot of sense to keep those two House districts as one Senate district. The other recommendation would be that on the western end of the

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county to look at keeping House District 80 with House District 44. That would mean you would have the area from Belgrade to Three Forks as one House district, the area going up into Jefferson County as the other, making one Senate district, which is again basically the same district that we have now, which is represented by Leo Lane. Now in doing that, we recognize that there will be ripple effects, but some of these ripple effects are good. The first would be that Madison County, which is one district, Beaverhead County which is another district, would be combined into a Senate district. That is what happens now. You would have a district that would be very much as we have now. There doesn't appear to be a good reason for making those changes, and I think when you make the changes, it's always very confusing for the constituents and it's difficult for the senator representing those constituents. In this case I think that Beaverhead and Madison Counties have a lot of interests in common. Now it would have other ripples too, and I cannot speak to the effect of those, but what it would mean and the way that we had worked it out would be that you would have 43 and 45 making up a district--that would be East Helena and Helena east side. You would have 48 and 49 as another district--that would be west Helena Valley and Powell. I think that's pretty much what you have right now, too. You would have 51 and 52--that would be Bigfork, that area, and the north end of Lake County. You would have 52 and 55, which would be the southern part of Lake County going into Missoula and you would have 69 and 57, which would be Granite County going in towards Missoula. My guess is who loses on this one is Missoula. And I don't know that area around Missoula well enough to know what the impact would be. And I don't know that that is the only way this ripple could work out. But I do contend that Gallatin County is already feeling that there has been some discrimination in that each of our House districts is at or near or over the maximum. This would give us two Senate districts within Gallatin County which are basically the same as what we have now. It would give us a half of another Senate district which would be essentially the same as what we have now. And if it could work out this way, we would be very well pleased. I must say that I really sympathize with the work of this committee, but especially with the Commission. We suffered through a lot, and we've tried to come up with a lot of proposals that Gallatin County felt would work better for us. They haven't worked out well, and I would hope that at least for these, for the Senate districts, that you would consider this proposal.

SENATOR STORY: Thank you. Representative Nordtvedt.

REPRESENTATIVE NORDTVEDT: Mr. Chairman, Committee members, I am Ken Nordtvedt, Representative of District 77 in Bozeman, and I have two items. I'll be very brief. First, in response to the recommendations of Senator Eck, I think there is a serious problem with that proposal from the point of view of Gallatins. Second, economic impact. Gallatins, number one, have cultural, and our number two economic activity is Montana State University. I think Senator Eck's proposal would reduce from three to two the number of senators who have a direct interest in the interests of Montana State University. From that point of view, I think it would be detrimental to Gallatin. Let me show you why. Right now there is one senatorial district in Bozeman, where Montana State University is. The present recommended senatorial grouping would put 79 and 80 together as a senatorial district and 75 and 76 together as a senatorial district. Seventy-six and 79 have become basically bedroom districts of suburban Bozeman, with a great deal of growth and development, a good fraction of the employees in the Bozeman economy living in 76 and 79. I think under the present groupings all three of those senators would have to be interested in the interests of Montana State University.

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I think that would cover Gallatin County. Under the grouping suggested just previously, 80 going with 44 and 75 going with 67, or whatever, you would only have two senators, the urban senator and the bedroom community senator closely tied to the interests of Montana State University. So I would seriously question this rearrangement from the point of view of Gallatin County's interests, particularly because our chief competitor in past years, Missoula, very much wants to have four senators within their county. So that's item number one. Item number two is that yesterday afternoon Miss Brodsky came to me with some suggestions on how we could solve one of the problems in Gallatin County, and I certainly appreciate her efforts to work on these problems. These problems are that we have four districts, 76, 77, 78, and 79, all at the 5% variation on the high side. We have four districts clustered together, and that represents a total of 1,600 citizens in some loose way disenfranchised or having their voter strength diluted. And we've been trying to get our districts brought down to size. Now she has looked at some possibilities and shown them to me, which would move some of that excess population eventually out into 75 and 80. And although that would somewhat reduce the problems in urban and suburban Bozeman, I fear it puts the population problems into 75 and 80. But I do appreciate the fact that ripples can be produced, and we can rearrange this Apportionment Plan at this point. I'd have to be quite frank with you--I think the fairest way to solve the population problems of Gallatin's four excess districts is that these ripples would eventually have to move as far as Butte and Silver Bow, which is not that far away, and to be absorbed and increasing a bit the size of the districts in Butte-Silver Bow. That is the basic problem, and although I think some of these proposals of the last 24 hours would help the four mostly affected districts, they don't basically solve the problem, they move it to 75 and 80. And I think the number one way to solve this is to have this ripple propogated about 90 miles to Butte-Silver Bow, and rearrange these districts more in line with the ideal size. Thank you.

SENATOR STORY: Thank you. Representative Ellerd.

REPRESENTATIVE ELLERD: Thank you, Mr. Chairman. For the record, I am Representative Robert A. Ellerd, District 75. I testified yesterday, so I will be very brief. Senator Eck just made a proposal that I again find very political and very partisan, and I have felt that throughout these entire hearings. I want to point out to this committee that I am here solely in the interests of the people in the West Yellowstone-Gallatin Canyon area. Reapportionment is not going to affect my position at all if I should run again, absolutely not. And I feel sorry for those people because we're tearing their heart out. Now we're going to tear it out again. Under the proposal of the Commission has made that area still would have a senator representation in Gallatin County. We're not just going to completely divorce them and put them over into Madison County because they will not have any House representative under the way it is. Evidently, I couldn't follow her proposal, but it looks to me like it would cause the whole reapportionment of the, realigning of the whole western area through here, and I don't understand it. But I do understand it enough to know that those people and those people who live in Gallatin County should not turn against our people that live there. And Gallatin County is getting hurt under reapportionment. We think it's very unfair. But we're, again, like I stated yesterday, we had our attorney here yesterday, Mr. Whitney he's not here today. He didn't want to do that. We're not threatening anybody. We've already taken our position. We have hired our attorney, and we're going to go just as far as we have to. But if you have to change any Senate

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districts, please don't take those people again and let them have one representation in the county they live in. On 75; if you take that out of there there absolutely, they have no way in the world, they have way away from everyplace. It's approximately 70 miles from West Yellowstone to the Four Corners. You have a road going through the Madison on each end. You have 70 miles in the middle that you cannot get through in any way at all, unless you want to take an airplane or a pack mule or something. You can't get through, it's all mountains. We are very, very upset about what's happened, and we're not trying to give anybody. I've asked you people to hear it once. They're going to have to try to talk to the Commission to make any changes. Please don't accept this last one, because don't tear those people apart any more than they have been. Thank you.

SENATOR STORY: Thank you.

REPRESENTATIVE ELLERD: I'd like to add one more thing while I'm here. Senator Boylan represents that area. I don't know what he's going to say, I haven't talked to him. It's entirely up to him. But he's going to want his job again. West Yellowstone is a very isolated area in this state. They lie right next to Yellowstone Park, right next to Idaho, and they have not had very easy representation over the years. Senator Boylan has made a great effort to represent those people, and I have too. We've spent a lot of time. We've tried to give them fair representation because of the isolated area that they are in, and there's no way in the world that the Senate district and House district, putting them over where they want, not because those people representing wouldn't be fair and wouldn't try to take care of them, but you can't cover an area—it's just impossible for those people to have representation.

SENATOR STORY: Senator Boylan.

SENATOR BOYLAN: Mr. Chairman, members of the Committee. For the record, I am Senator Paul Boylan from Senate District 38. I am a little apprehensive to testify in front of this committee because I hate to divide up the spoils, and so by redistricting the same in our area as in some other areas, it has done quite a lot to our district. I am a native of Gallatin County, one time represented both part of Gallatin County under the old reapportionment and since then I have been representing Senate District 75 and 76, which is West Yellowstone. I think it's going to be a very big hardship on the people of West Yellowstone to have to go over into those other counties because of the terrain down here and so forth. But then come to the division of the spoils, why I'm kind of looking at maybe forming a Senate District out of 76 and 79, and if I do this I think it would be a fairly easy district for me to represent, a little easier than the other one, because of the contacts to be made. Not that I want to abandon the people in West Yellowstone and these type of things, but I think you have to face some facts of where it's easier to run and easier to put together. So with that, I thank the Committee very much.

SENATOR STORY: Thank you, Senator. You've spoken once, Sir.

SENATOR [illegible]: I'd like to speak in behalf of my number one topic, if I may.

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SENATOR STORY: No, there's an awful lot of people who still have to be heard. Now we'll take you, and then you. Either way. Did you people speak in the House yesterday? Both of you?

REPRESENTATIVE SWIFT: Yes, I did, Senator. Mr. Chairman, members of the Committee and members of the Commission. I have here a map of the county with my proposal, and I go on record in opposition to the...

SENATOR STORY: Would you give your name.

REPRESENTATIVE SWIFT: I'm Bernie Swift, Representative from District 91 in Ravalli County. I go on record as opposing the way our legislative districts in Ravalli County are formed. And I will point that out in relationship to the map I put on the board, and I will try to be very brief about it. And I'll leave these copies with you. If you recall, Senator Norman mentioned earlier this morning, and I think you heard him alluding to the ripple effect. Now I will allude to my reasons for not agreeing with what the folks have done with our legislative districts in Ravalli County. As you see, they have gone northward into Missoula County for getting the third of what we call the northern legislative district, No. 64, shown here. It's up in the northwest corner, northwest. What Senator Norman was alluding to is the very point that I am making right now, that Missoula County is an amoeba and is expanding outward on all sides. They are beginning to encroach on the rural areas and controlling what happens legislatively and senatorially, in view of that fact. And I further allude to this, by giving outside of Ravalli County we become a part of Missoula County as it gets into administrative effects, county commissioner effects, things related to schools, roads, and other matters. And I think most of us would agree if you only have to solve a problem with three people, it's much easier than it is if you have to solve it with six or possibly three or four more than that depending on the size of the county. And for this reason I propose that we have three legislative districts all within Ravalli County for the simple reason that as shown by this map we can do that with three equal divided units that are within .3 of 1 percent of each other on a population basis, which more than meets the criteria. We are also within the 5 percent Commission criteria. We are following what as I understand it the Commission said are the ground rules. We're not violating anything that I know of, and I also want to point out that as it came out in discussion yesterday in the House, this plan does not split Victor. It is to the east of Victor. It does not split that town. It does one other thing--it does take off approximately 600 people at the west side of Hamilton which was previously all in a southern unit and now going to be reducing that by 600, and there are 2,661 in Hamilton. But I don't think that really impairs the community aspect or the life situation. Now I say this can be done, and it can be done without what we have been discussing here as a ripple effect. It will not affect any areas unduly because these numbers, 1,053, that lie north of the Ravalli County line can be absorbed in the nine legislative districts that make up the Missoula County complex. Therefore, I respect, we are not impinging upon anyone, we are not causing any undue impact with the Commission's work. There will be a little work to renumbering, but that has gone on throughout this process. I might also add that, and I discussed this with the Commission on business on different occasions, as yet I have gotten no consideration for changing, and I want to make it very clear I am not only speaking for myself from the standpoint of politics, I'm speaking for the citizenry in this area of Ravalli County and I am the duly representative Senator Severson and

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Representative Bob Thoft. And they concur with this. I don't think there is any question about what the intent is and the reasons for what we want to do. Leave us alone, we can distribute our county equally, and let us make our own decisions within our county. That's all we're asking. We don't want the undue effect of the job the Commission has done. And I will leave both of these with you in the event the Commission would like a copy. Thank you very much for the opportunity to talk to you.

SENATOR STORY: Thank you. Representative Keyser.

REPRESENTATIVE SWIFT: Also, may I, Mr. Chairman, may I...

SENATOR STORY: Yes.

REPRESENTATIVE SWIFT: May I also allude to the statement I made yesterday at the House hearing that I do not desire to have senatorial districts combined on the southern part of the county. We have gone on record in previous years that that is the second worst alternative that we have. We are willing to go either way, and we leave that to the Commission's wisdom.

SENATOR STORY: Representative Keyser.

REPRESENTATIVE KEYSER: Members of the Committee, Representative Keyser, District 81, which covers Beaverhead and Madison County. In defference to my good friends from Gallatin, I have slight disagreement with one and I have no disagreement with the other. I am basically speaking of the senatorial districts because I realize that House districts are pretty well set. If I had my druthers, I would like to stay with Beaverhead, but that's impossible. I understand the way it is. I think, ladies and gentlemen, if you want to combine the Senate districts, the Senate district that has a lot of compatibility, something that historically may have been together as far as a Senate district, part of it anyway, I would say that Madison and Beaverhead, 67 and 75, would make a very good Senate district and would probably, it would be much more, this district, the combination of 67 and 75, much more compatible with 75, and I think now that you would have 76, which would be Senate District 38 the way it is on your proposed map. I realize that we still haven't done anything for West Yellowstone, as far as Senator Ellerd has said, but I think these are things that we are not going to be probably able to handle under the proposed districts. I know that 76 and 79 from my point of view, with the area it encompasses, is way better combined. These are basically very rural areas, two very rural counties and the combination of 67 and 70 would make a better Senate district than the proposed 75 and 76. Thank you.

SENATOR STORY: Thank you. Now, is there anyone from out of town who has traveled distances to be at this hearing? How many of you are there? Can you have one spokesman? Are you folks next? All right, quickly.

DOROTHY PAGE: Mr. Chairman, members of the Committee, and Montana Commission. I am Dorothy Page from Granite County. I have sat here and wondered about what's going on. Nobody has mentioned the poor little county that has no voice. Granite County is large as far as area wise, but of course we haven't a large population,

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so we have no one to speak for us. At the present time, we are in an area where we have part of Anaconda, part of Deer Lodge County, part of Powell County is in with us, Granite County, part of Missoula clear up to Seeley Lake and then up to Helena. You can't tell me that we can have any kind of representation that's proper that we can get any help from anyone. I laugh at these fellows worrying whether they're going to have two senators or four. I'd just like one. We have the audacity to suggest that maybe we follow the U.S. Senate idea and forget about this 1-man, 1-vote business as far as the Senators are concerned and give each county back our own little voice. We all need a voice to cry out of the wilderness. Our problems are different than the problems in the other counties. We are very satisfied with Kermit. He's been great to us all, and if we have to, we prefer to be with him than to go into Beaverhead, because that again would throw us clear off as far as travel. I don't know if any of you realize how far it is to travel just through Granite County to do any campaigning. Then when you have to go clear down to Beaverhead and go down as far as Wonida, why you'd have to start out the day after the election and start electioneering. And you'd never get there because there's a lot of impassable places too. And now we've had the audacity to suggest that we look deeper into the idea that each little county should get some representation too. If not, we might decide to be a foreign country—that would be one way to get a little attention. Because we all feel real badly that we have no way of getting in and saying anything that would help. You can't tell me anyone can be fair in their decisions when they've got the vote in the larger counties. They're not going to worry too much about us unless our smaller county happens to agree with what the larger county wants. So we've had the audacity to suggest that instead of all this redistricting we'd like to see us go back to the one senator for every county, and I think we'd all be happier. There wouldn't be all this worrying about whether it's political or not. We could decide the politics by voting. If you want a Republican senator, fine, you can have one. If you want a Democrat, vote for him. You're not going to have to worry about whether the Commission has divided us up so our parties are getting all mixed up. Our group today is a group that are mixed, we're Republicans and Democrats. But we first belong to the State of Montana. We'd like to be Montanans again. We are Granite Countians too. We want to be represented by our county, and then we worry about our politics. And I think it's about time everybody else started worrying the same way. Thank you.

SENATOR STORY: Thank you. Yes.

JOE STRABAL: Mr. Chairman, members of the Committee and the Apportionment Commission. I am Joe Strabal, Phillipsburg, and as Mrs. Page said, we haven't had representation since 1964. However, on your plan here that is proposed, I think this House District 68 and 69 would be better for us in my view because I campaigned this other year 4,500 miles from August to November mainly to see the people. We have right here a little group, Anaconda and Granite, we have to go clear up past Powell into Missoula, we have to go over to Helena to Lincoln and into the city limits here, and I can't see any reason where, just a suggestion maybe, but I don't think there's a Senate district created here yet, but maybe we should create one from Anaconda and Granite. That's the number one choice. We have had the Supreme Court rule in 1964 one-man one-vote because they felt a voter wasn't getting a fair shake, and I believe that. But I don't think we're

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getting too fair a shake. I have nothing against the people that are representing us. They've worked hard, but that's a lot of territory, and I think it would be a diminishment of our vote if we can't get closer together where we can get some resident representation. Thank you.

SENATOR STORY: Thank you. Further people from out of town? Yes.

CARL SEEL: Mr. Chairman, members of the Committee and the Commission. For the record, my name is Carl Seel. I'm from the law firm of White and Seel from Bozeman, and I'm here on behalf of the bipartisan committee in Gallatin County who have been aggrieved by the plan that is being proposed by the Commission. As the foundation for my statements, today I would like to briefly review what happened in Gallatin County. It started in April when a grass roots committee prepared a plan with the criteria set forth by the Commission, prepared it and submitted it to that Commission, at which time it was tentatively approved 4-1. That plan has a deviation from all the House districts no greater than 66 people, and a percentage deviation, the maximum one being 4.4, the others less than 4 percent. Something happened after that. And by July 16 another plan had been slipped in to replace it. And that plan is the one that's being presented to you today. Now I would like to hand out to you at this time a handout which shows how those House districts have been reapportioned in Gallatin County. And you will see that out of the top twelve of the largest districts in the State of Montana, Gallatin County has four of those districts. Gallatin County has two of the largest districts of the top three in the State of Montana. This variance from the norm not only makes the proposed plan constitutionally invalid, it also makes it susceptible to challenge. The plan that is presently being presented to you violates every condition and criteria set forth by the Commission's own plans. First of all, community interest. Looking at Gallatin Canyon, you can see it's a long, long county. The individuals in the southern part of the county are being put into Madison County where they have no community interest. In fact the original boundaries of Gallatin County were set that way because of the natural boundaries, the Madison Range, which is essentially impassable. An individual in the southern part of Gallatin County, to meet with his representative, would have to travel through Bozeman and then over and back into Madison County. There is very little community interest of an individual who has a condominium in Four Corners with a farmer, a rancher, a fisherman in the Big Hole area. There is very little community interest between a student living in Four Corners six miles outside of Bozeman with a geologist or other individual in Melrose. Condition One is violated. Condition Two, contiguousness of an area and compactness, they are contiguous but they are not compact, if you look at the area combining Madison County and the southern part of Gallatin County. Violated again. Condition Number Three, existing boundaries, violated. Change from the present status. Condition Four, violated. Existing legislative districts, those lines are completely blurred. The lines of county governments, and school districts, etc., have all been violated by this plan. Next, geographic boundaries, you have the Madison Range. There are no highways connecting the individuals in Gallatin County with the new district in Madison County. Communications, presently there exists no radio, no television, and no newspapers which represent both of those areas. And lastly, travel, this is an area where there is an interest. They will be traveling a lot. And it isn't necessary. The handout shows to you the deviation from the norm in four of Gallatin County's districts, the greatest of any of them in the State of Montana, again two of the top three.

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But in addition to that, there's a Senate district which has a deviation of 9.14 percent, the largest in the State of Montana and also one that exceeds the Commission's own maximum variation of 5 percent. These deviations are great enough. However, taking into account the growth of Gallatin County, which is the fourth fastest growing county in the State, and also the net fourth fastest growing in the State, over 10,000 persons per decade, there will be a variance between Gallatin County and other slower growing counties of as much as 16,000 people by 1990, which would be two entire House seats. Presently, and in the House hearings yesterday, Walt Sales said that Walter Sales and Robert Ellard represent as many people as four representatives currently in Silver Bow County. Now Gallatin County was hurt by the last reapportionment, as we can see now ten years later. If this plan is allowed to pass again, Gallatin County will suffer yet again in that it being a fast growing town the deviations will be exacerbated in ten years to the point where there will be 16,000 people in Gallatin County being deprived of their one-man, one-vote constitutional protection. In light of those arguments, we would urge your recommendation to the Commission that the Gallatin County Apportionment Plan be re-examined, that they take into account the growth of Gallatin County as well as the deviation which you have seen in this handout which shows it the highest in the State, to remedy the Senate district which is over 5 percent of the maximum allowed and puts this plan susceptible to being stalled, held up in the long run, possibly constitutionally invalid. Thank you.

SENATOR STORY: Thank you, Mr. Seel.

LEO LANE: Mr. Chairman, Committee and Commission, I'm Leo Lane, Representative from District 40. When I run, I run in Gallatin County, which goes almost up to the Riverside Country Club almost into Bozeman, not quite into Bozeman. But it takes in a big end of Gallatin County, and it takes in Jefferson County, then part of Lewis & Clark County and part of Broadwater County. The people that elected me was quite a bit in Jefferson County and Gallatin County and these other counties, and I would represent the college. I mean I've been a native and all my relatives and folks have been natives in that area all our lives, and a lot of our relatives go to school in that University, and I didn't think that Representative Nordtvedt was fair when he said that I wouldn't represent that area. So I kind of like that plan where I take in part of Gallatin County and Jefferson County. Thank you.

SENATOR STORY: Thank you.

REPRESENTATIVE HANSON: Mr. Chairman, members of the Committee and Commission, I'm Representative Marian Hanson from District 57, which is Powder River, Carter. I oppose the plan splitting the County of Powder River for Senate districts. It's been split for House districts. There is a plan before the Commission called Plan X which would put Powder River, Carter, and Fallon Counties back together and combine us with Wilmeux and part of Dawson as a Senate district. It would also address the Cheyenne Indian Reservation, as their Plan X puts Colstrip in with Lame Deer and the Cheyenne Indian Reservation and then that would address a Senator from the Crow and the Cheyenne Indian Nations. And so therefore I feel that the people of Southeastern Montana have not been able to be truly represented with [illegible] Senate districts that [illegible] the whole south or eastern

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edge of the State and then putting the rest of Powder River County in with the Indian Reservations for a Senate district. Thank you.

SENATOR STORY: Thank you, Representative Hanson. Yes, Senator Gage.

SENATOR GAGE: Mr. Chairman, members of the Committee and the Commission. I would like to speak in support of Senator Aklestad's proposal and add to that--Senator Gage--add to that the fact that we have in Cut Bank a situation where the Blackfeet Tribal people are much more used to coming to the Cut Bank area for shopping than they are to the areas east, which they are being proposed to be put into. We have a greater understanding of those people because we have much more contact with them and would be most appreciative of being able to represent them in a Senate district which Senator Aklestad's proposal would allow us to do, in addition to putting the County seat of Cut Bank back into the same Senate district. We have great concern for the Blackfeet Nation. We met with their Tribal Council, and they were appreciative of the fact that we did come up and meet with them. They indicated that this was the first time an elected official had been in their council after an election. They recognized that we come up and go into their homes before the election, but they were appreciative that we also came up after the election. We would like to give you that for your consideration and for prime consideration in recognizing Senator Aklestad's program. Thank you.

SENATOR STORY: Thank you, Senator Gage. Yes.

DENNIS BERGVALL: Senator Story, members of the Committee. My name is Dennis Bergvall. I presently hold the position as the Executive Director of the Montana Republican Party. Since I, like you, am feeling hunger pangs moving on rather quickly, it's getting to be a rather long session, I'll move along rather quickly. First of which is to read on behalf of Senate President Stan Stephens from Havre a letter which is being circulated for you at this time to be read for the record. (Read letter.) You can have that letter now for the record. Very briefly, I have a few comments of my own. I testified several times before the Commission and once yesterday before the House Committee. And I will make a few brief comments for the record for your consideration by your Committee. I find it interesting this morning to have the analogy by Gene Mahoney that the reapportionment process is much like a horse race, and as Republicans we don't certainly want to lean too heavily on the fact that this could have been a greater horse race, but I think it's fair to say that probably the Democrats' horse had one more leg than ours, sufficiently, probably more swift in achieving its goal. I also find it interesting that somehow in the process of the eleventh hour Reapportionment Plan we can find such a startling confession that the Commission Chairman found it inseparable to divide partisanship from the process. I think that this is a real concern to us. And I would rest in opposition to the process which has taken place because I feel that somehow the process which we have developed as the independent commission was designed for really two basic purposes, that ultimately the reapportionment process would be made to be a more fair and equitable presenta-

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tion. And I think that somehow in their zeal to paint one color the complexion of the state politically, we have forgotten some of these and defeated the basic purposes of that Commission. Was it not, and some of this results I think is in your hands today and in the hands of the House Committee as well, which has the constitutional authority to make recommendations which hopefully will be considered fairly and impartially by the Reapportionment Commission staff. Your job essentially is to fine tune some of the rough edges on the procedures as well as to correct some of the flaws which have been rehearsed today and certainly put forth for you a, quite a list of things that appear across the state. I would hope we could resolve it this way and not have to go to any higher or more impartial authority because that may ultimately have to be the case really to be in fairness to the whole process. I will not dwell too much on some of the areas around the state so much as to quickly tell you that we are concerned, and I believe the concern is this: It's not so much the reapportionment process, but ultimately to make everybody happy when we are done, but really more importantly that where there were alternatives that were more fair that were not chosen or were not considered, that those alternatives be considered now so as to come up with the strongest and best plan. And we've seen areas in Southeastern Montana, in Havre, that's Senator Stephens' testimony, the area around Cut Bank where I think they have very pressing problems, Western Montana, Northeastern Montana, areas where we could quite conceivably without any ripple effect create some sort of a solution that would make those people feel the process was more just. I will not dwell on that any more, to finally say just this, and that's that we have a tremendous amount of respect for the fact that this is not an easy job. But it's important to know that this will last for ten years. And I think that that angle of fairness is very, very important, so I underline that for you. And finally, I wish that you would give it extra consideration. Thank you.

SENATOR STORY: Thank you. Are there other people? Yes.

SENATOR BROWN: Mr. Chairman, members of the Committee. My name is Bob Brown. I represent Senate District 10, which under the current reapportionment contains Whitefish and Eureka. And I appear before you here today to criticize a district that's been criticized publicly and privately I think quite a bit already. It would be the proposed Senate district that would combine proposed House districts 50 and 49, which is right here on the map. That district violates, I think, most if not all of the criteria established by the Apportionment Commission. Certainly it violates the community boundaries involved because it runs from within a few miles of Polson and includes the town of Bigfork and the town of Deer Lodge and I think goes within a few miles of Anaconda, and obviously it's not contiguous, obviously not compact, and I don't think it's necessary either. I think there are better alternatives, better options, and I'd suggest that your committee might consider recommending to the Commission that you instead combine House District 51 with House District 50 and that you take the southern portion of Lake County, which is House District 52, and tie it in with Missoula County, perhaps the Rattlesnake area, and I think that could be done without any very drastic ripple effects. And I think it would be a lot fairer to the people involved in these areas, and it would be more reflective of the criteria that the Commission established itself.

SENATOR STORY: Senator Turnage.

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SENATOR TURNAGE: Mr. Chairman, members of the Committee, my name is Gene Turnage. I represent Senate District 13. I want to endorse what Senator Brown said. I'd like to adopt at the expense of plagiarism what Attorney Seel said. I think that was well done. I have nothing further to add, and I hope that something will be considered. I will make just one general comment that the process of reapportionment which is and does correct a constitutional unfairness of the entire nation was operating under before the United States Supreme Court and was intended to give fair representation to everyone. What I am afraid is happening in the Commission's pursuit of the present plan is they have proceeded basically on the numbers, and I fear that they assume that just because the numbers fit, that that's all that's necessary. And I think not. I think there's a constitutional effect to have rational common sense representation. And that is why we would like some consideration of the comments of Senator Brown.

SENATOR STORY: Thank you. Is there any other? Representative Marks.

REPRESENTATIVE MARKS: Mr. Chairman and members of the Committee. For the record my name is Bob Marks, presently the occupant of District 80. My references today will be given to the area indicated on your plat as 44. I'm especially here today to comment on some remarks attributed to the Chairman of the Reapportionment Committee to the press yesterday, relative to my position on the Gallatin proposal that was brought before this Committee hearing last year. I would like to set the record straight. I did not oppose the so-called Johnson-Marchwick Plan last year. I did not, as Chairman Mahoney said, testify against it, but I testified against an ill-conceived plan which would have carved Jefferson County into three parts, three districts where no person from Jefferson County of either political party could ever expect to be elected. The plan I testified against was not proposed by Gallatin County and it was opposed by hundreds of people from Jefferson County from both political persuasions. By adopting presently tentative plan, District 44 incorporating Western Broadwater County with Jefferson County into one House district in no way precludes the committee from accommodating the Johnson-Marchwick Plan or giving Gallatin County more than what they have ended up with. I would like to have you check the record, Mr. Chairman.

SENATOR STORY: Thank you. Now, is there anyone in this room that has not spoken that wishes to speak. Representative Ramirez.

REPRESENTATIVE RAMIREZ: Mr. Chairman, Jack Ramirez, House District 64. And I just want to make a point that I have already brought up with the Commission. I wrote a letter on August 12, 1982, and I would like to submit a copy of that. It doesn't have all the attachments, but I would like to submit that copy. I'm not here to really change the boundaries of my district, I don't care one way or the other. I think there were two alternatives that were presented, one was called the blue alternative and one the orange alternative. The orange was adopted. I think the blue is much more contiguous, it's much more compact, it was a better plan. But I'm not here to gripe about that. One of the alternatives to the plan dealt with the area that is basically part of Billings. It's not within the city limits, but it's part of the Billings community. The line for both of these

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districts both under orange and blue went down the major street called Rimrock Road. And on the north of Rimrock Road are a number of subdivisions. All of those people along the road consider themselves to be a part of the Billings community, and they are part of the Billings community. To the south of Rimrock Road is the same situation that kind of goes along out in the country, and there's a map, but I don't know if I can show you very well. But this is the road. And the subdivisions on the south side of the road consider themselves, as I say, as part of the Billings community. Those on the north side do too. But the people on the south side of the road in this area right here were taken out and were put into a district that is basically Stillwater County, and they have absolutely no identity of interest with the people in Stillwater County. These people are Billings dwellers for all practical purposes. They are cut off on the fringe and taken into a rural district, and I just don't think it's conscionable. And those people, I talked with some of them, they are very upset about that. They don't feel that they're going to have the kind of representation that they should have because they consider themselves part of the urban community, and they're not even really going to be part of the Yellowstone County district because that part of Yellowstone County was put in Stillwater and will be dominated by Stillwater County. I don't care if this area goes into my district, that's not what I'm here for. I just think that those people are entitled to go into some district that is connected with the City of Billings; whether it's mine or somebody else's is immaterial. I was told at the time that the only way that that could be done would be to take a little chunk out of Carbon County and put it with Stillwater County. I see nothing wrong with this. It's true, one of the standards I know is political boundaries, but the people in Carbon County have much greater identity of interests with those in Stillwater County than this group of a couple of thousand people, or not, I should say probably about 7 or 800 people. I don't know how many exactly. But certainly there's greater identity of interests there. And it seems to me that that should cut that county boundary and put part of Carbon in with Stillwater so that this can be left in the area that it belongs. And it just seems to me to be such a fair and reasonable change that it can't be disputed. But in any event, I wanted that brought to the attention of the Committee.

SENATOR STORY: Is there anyone else that has not spoken previously in this hearing?

SENATOR DANIELS: I simply, Mr. Chairman, want to make the record clear that my first remark with reference to my second choice and in the interest of time I would say that my first choice, the one that appears logical, is the combination of Districts 49 and 68, which are Granite and Powell County, and I would simply endorse the remarks made by Senators Galt and Van Valkenburg

SENATOR STORY: Thank you.

REPRESENTATIVE NORDTVEDT: Also, Mr. Chairman, I want to make sure the record is clear that I never questioned Senator Lane's commitment to Montana State University interests. I view legislative districts as things that will in all likelihood

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outlast my encumbrancy or any other encumbancies, and they should be looked at from the point of view of the districts and the people and not the present representatives.

SENATOR STORY: Senator Galt.

SENATOR GALT: I'm sorry, but I want to set the record clear too. Yesterday I made a statement which was not before this Committee, but the House Committee in regards that I had not been contacted in my area for a meeting with Miss Brodsky. And in checking back, I am sure I was out of town at the time. I certainly want to complement her on what she did, and she was very cooperative at all times. And I am sure that what I said yesterday was an error on my part because I am sure I was contacted.

SENATOR STORY: Thank you. Senator Stimatz.

SENATOR STIMATZ: Larry Stimatz, District 43, Silverbow County. I already pointed out to the Commission on my letter of October 8, 1982. I agree with Senator Haffey. And the district in Silverbow the way it is presently proposed is to go east into Anaconda and Silverbow. In a June meeting it was proposed that we would go west in Anaconda and east into Jefferson County. That is what I favored, and I favored keeping my two districts in Silverbow County. We are going to have to go outside our county to get one other House district for the Senate, and it can very easily be any one of the others. Anne Brodsky has the alternatives that have been proposed. Thank you.

SENATOR STORY: Senator Marbut.

SENATOR MARBUT: Reed Marbut, Missoula County. I wish to preserve my position on record and the right to submit written testimony to this committee.

SENATOR STORY: Senator Towe.

SENATOR TOWE: My comment is that my particular district is divided into three parts very nicely almost equally, and I don't think that the Reapportionment could have done worse to my district, but I don't wish to complain about it because I wish to comment. Having been involved eight years ago in trying to draw districts for the Legislature when the Legislature had the responsibility, I am convinced it isn't possible for the Legislature to reapportion itself, so I think that what you have seen today is a good illustration of how the system is working and working very well, and I would ask that the Commission do pay attention to the comments that were heard today, and I am sure they have and will. And I appreciate their taking their time to sit with us today and go through this procedure and hear the complaints

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and I am happy to abide by the decision of the Commission. That does not bother me at all. I do have a question, two things that I was most struck by today. First of all, I am very mindful of Mrs. Page's comments. She is absolutely right that we did a terrible thing to Phillipsburg and Granite County eight years ago, and are we doing any better at this time? In any event, I think that those comments are well taken. Secondly, I guess the question I had was that comments about the two Gallatin County Districts being in excess of 5 percent, to the members of the Commission, Gene or somebody, is that a concern? Apparently your guideline is 5 percent. I am not familiar with the more recent Supreme Court cases. Do you feel confident that if we exceed 5 percent we will not be in trouble legally on a 5% deviation?

EUGENE MAHONEY: It is my understanding that each individual case will stand on its own merits if you deviate. We set the 5 percent ourselves. But if you have a justifiable reason for doing it, I think they will approve up to 16 percent. But you have to have a good reason. That is why we tried to keep it under 5 percent. Admittedly we had to violate it ourselves to try to put that thing together.

SENATOR TOWE: How about commenting in those two areas--fast growing and likely to substantially exceed 5 percent in ten years. Is that something the Commission has considered?

EUGENE MAHONEY: I know of no case that ruled that you must take in potential growth in the reapportionment process either in the United States Supreme Court, the Circuit Court of Appeals, Federal District Court in Billings, no case where it says you must decide the question on that basis.

SENATOR TOWE: Twenty-five of us here in the Senate are particularly concerned about one other issue that hasn't been discussed this morning, and that is the Constitutional provision that says Senators are elected to four-year terms. And I believe there are some 20 states two years ago that had the same problem that districts were dissolved in those states. Does that cause a problem with the Commission?

EUGENE MAHONEY: I don't think that's our problem, really.

SENATOR STORY: Senator Hammond.

SENATOR HAMMOND: Mr. Chairman, members of the Commission, members of the Committee. I'm Senator Hammond, Senate District 3, and I would like to go on record as being in favor of the plan presented by Solberg and Etchart, making it possible for Blaine and Phillips to remain together and maintain rural representation in the Senate. With the present plan they will be divided between the city of Havre and practically the city of Glasgow which would make it pretty difficult for any rural representation for either of those two counties in the Legislature.

SENATOR R. MANNING: I'm Senator Dick Manning, District 18, Cascade County. My district was the district that was consolidated with two others, but I can live with what happened. And you would have a very good bipartisan support for what you did in Great Falls.

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SENATOR STORY: Senator Tveit.

SENATOR TVEIT: Senator Tveit, Senate District 27. As we listen to this today, I can see there are many disparities and discrepancies in my area of the state. I am sure the Committee will listen and hopefully recommend to the Commission. When we talk about distances in some of these counties, we have one House district that is farther than Billings to Butte, and it is all one district.

SENATOR STORY: Senator Marbut.

SENATOR MARBUT: I want to point out an error on the map, involving District 57, east side of Missoula.

SENATOR STORY: Any other questions of the Committee? If not, we thank you very much for your presentation and all of you who came.

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SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA HONORING THE FIRST SPECIAL SERVICE FORCE FOR ITS SACRIFICES AND ACCOMPLISHMENTS DURING WORLD WAR II AND SUPPORTING THE PLACEMENT OF A MEMORIAL DURING THE CELEBRATION OF THE 40TH ANNIVERSARY OF THE ALLIED LIBERATION OF ROME.

WHEREAS, June 4, 1984, will be the 40th anniversary of the Allied liberation of the Eternal City of Rome, Italy; and

WHEREAS, the First Special Service Force, a paracommando brigade composed of American and Canadian troops that was formed and trained in Montana, was the first Allied unit to breach the gates of Rome, which led to the liberation of the city; and

WHEREAS, a proper celebration and placing of a memorial is planned, with participation by 14 nations, to commemorate the 40th anniversary of this historic event; and

WHEREAS, veterans of the First Special Service Force and valiant Italian Resistance alongside whom they fought in the battle to liberate Rome intend to place a tablet dedicated to their comrades in arms who died in that campaign; and

WHEREAS, active units of the Armies of Italy, Canada, and the United States will participate in this dedication ceremony to exemplify the friendship and unity of the three countries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That in proud and grateful acknowledgement of the splendid combat record and accomplishments of the First Special Service Force, the citizens of Montana be urged to reflect on the sacrifices of these courageous men and to assist them in all ways toward the success of this 40th anniversary event.

BE IT FURTHER RESOLVED, that copies of this resolution, asking their commitment to, assistance in, and approval of this international event, be sent to the Honorable John Melcher, Senator from Montana; the Honorable Max Baucus, Senator from Montana; the Honorable Pat Williams, Representative from the First Congressional District; and the Honorable Ron Marlenee, Representative from the Second Congressional District.

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules are adopted:

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CHAPTER 1
Presiding Officer — Decorum, Order, and Debate

H1-1. The house of representatives shall elect one of its members speaker. The house shall choose its other officers and shall be the judge of the elections, returns, and qualifications of its members.

H1-2. The house shall elect one of its members speaker pro tempore, who shall perform all of the duties of the speaker in the absence of that officer and on such other occasions as the speaker may request.

H1-3. No member shall speak for longer than 30 minutes in debate on any one motion or question; however, in committee of the whole, no member may speak over 5 minutes on any motion except the member who made the motion on the immediately pending question, and that member shall have 5 minutes to close.

H1-4. No member shall speak more than once on the same question without the unanimous consent of the house, unless he has proposed or introduced the immediately pending question, in which case he may speak in reply after all members choosing to speak have spoken.

H1-5. If the motions "do pass" and "do not pass" or "indefinitely postpone" both fail on Second Reading, a motion to reconsider is in order in Committee of the Whole.

H1-6. Subject to Joint Rules 1-2 and 1-3, the following persons may be admitted to the floor of the house during sessions: legislators; legislative officers and employees whose presence is necessary for the conduct of the business of the session; legislative aides and interns; accredited members of the press, radio, and television; former legislators; members' spouses and their children; and guests of legislators.

CHAPTER 2
Meetings, Quorums, and Attendance

H2-1. Lobbying on the floor of the House of Representatives is prohibited during the session and within 2 hours prior to the commencement of a session and within one-half hour after recess or adjournment.

CHAPTER 3
Committees

H3-1. The standing committees of the house are as follows:

1. Agriculture, Livestock and Irrigation
2. Appropriations
3. Business and Industry
4. Education and Cultural Resources
5. Fish and Game
6. Highways and Transportation
7. Judiciary

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8. Labor and Employment Relations

9. Legislative Administration/Bills and Journal

10. Local Government

11. Natural Resources

12. Human Services

13. Rules

14. State Administration

15. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on.

H3-2. The committee on rules shall consist of the speaker, the majority leader and other members of the majority party appointed by the speaker, the minority leader and other members of the minority party designated by the minority leader and appointed by the speaker. The speaker shall appoint other standing committees, select committees, and house membership on joint committees and conference committees.

H3-3. The speaker, majority leader, and minority leader shall be ex officio members on all committees.

H3-4. All bills having "Do Pass" committee recommendations shall be deemed adopted and shall be placed on second reading unless they are referred to a committee by motion duly made on order of business No. 6.

If the committee report is that the bill "Do Not Pass", the bill shall be posted by the chief clerk of the house and the members of the house have 24 hours in which to indicate in writing to the chief clerk that they wish to have the bill debated. If 20 members, including at least one-third of the appointed members of the committee making the report, so indicate, the bill will be placed on second reading for debate. If no such indication is made, the committee report will be voted on on order of business No. 2.

CHAPTER 4
Rules

H4-1. (1) A motion to amend or adopt a rule of the house shall be referred to the committee on rules, which shall report no later than the next legislative day. Unless recommended by the committee on rules, no house rule shall be amended or adopted except by a two-thirds vote.

(2) A house rule may be suspended temporarily for a specified purpose by a two-thirds vote.

H4-2. Mason's Manual of Legislative Procedure governs the proceedings of the house of representatives in all cases not covered by these rules.

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HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TRANSMITTING RECOMMENDATIONS TO THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION REGARDING ITS REDISTRICTING PLAN SUBMITTED UNDEF ARTICLE V, SECTION 14, OF THE MONTANA CONSTITUTION.

WHEREAS, a Montana Districting and Apportionment Commission was appointed in 1979; and

WHEREAS, the Commission prepared a plan for redistricting and reapportioning the state into legislative and congressional districts and presented it to the 48th Legislature on January 5, 1983, as required by Article V, section 14, of the Montana Constitution; and

WHEREAS, the House of Representatives has studied the plan submitted to it and has considered several recommendations regarding the plan; and

WHEREAS, the House of Representatives must return the plan to the Commission with its recommendations on or before February 4, 1983, in accordance with the Montana Constitution; and

WHEREAS, the House of Representatives chooses to return its recommendations in the form of a simple resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the House of Representatives recommends that the Montana Districting and Apportionment Commission adopt the congressional and legislative redistricting plan as it was submitted to the 48th Legislature with the following modifications and recommendations:

(1) house districts 81 and 82 be amended so that the district in which Livingston is located be made more urban in nature and the district consisting of rural Park County, Sweetgrass County and a portion of Yellowstone National Park be made more rural in nature, as described on the attached census report;

(2) house districts 99 and 100 be amended so that the area in ED 3027A in the Hardin division of Big Horn County that is north of the school district boundary in sections 21 and 22 TIN R33E be placed in house district 99 rather than in house district 100, as described on the attached census report;

(3) house districts 70 and 74 be amended so that the area in Silver Bow County which is south of the Continental Divide and west of interstate 15 be placed in district 70 rather than in district 74 and that the area in Silver Bow County that is south of Four Mile Vue, east of Harrison Avenue, west of the Chicago, Milwaukee, St. Paul and Pacific railroad tracks and north of Little Basin Creek and Little Basin Creek road be

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placed in district 74 rather than district 70, as described on the attached census report;

(4) senate districts 25, 26, 28, 29, 34, and 35 be withdrawn and the following house districts be paired to form senate districts:

50 and 51
52 and 55
49 and 69
57 and 68
67 and 70.

BE IT FURTHER RESOLVED, that a copy of this resolution be kept on file by the Secretary of State and that copies be sent by the Secretary of State to the chairman of the Montana Districting and Apportionment Commission; the Honorable Ron Marlenee, Congressman from the Second Congressional District; and the Honorable Pat Williams, Congressman from the First Congressional District.

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HOUSE DISTRICT 81, WITH RECOMMENDED AMENDMENTS

PARK COUNTY	
MINUS IN UPPER YELLOWSTONE VALLEY DIVISION	
LIVINGSTON CITY	
MINUS IN REMAINDER OF UPPER YELLOWSTONE VALLEY DIVISION	
ED 1182	
ED 1183X	4,651
SWEET GRASS COUNTY	3,216
IN YELLOWSTONE NATIONAL PARK	
YELLOWSTONE NATIONAL PARK EAST DIVISION	37
TOTAL FOR HOUSE DISTRICT NO. 81	7,904
RELATIVE DEVIATION	+.47%

HOUSE DISTRICT 82, WITH RECOMMENDED AMENDMENTS

IN PARK COUNTY	
IN UPPER YELLOWSTONE VALLEY DIVISION	
LIVINGSTON CITY	6,994
IN REMAINDER OF UPPER YELLOWSTONE VALLEY DIVISION	
ED 1182	305
ED 1183X	919
TOTAL FOR HOUSE DISTRICT 82	8,218
RELATIVE DEVIATION	+4.46%

HOUSE DISTRICT 99, WITH RECOMMENDED AMENDMENTS

IN BIG HORN COUNTY	
CROW RESERVATION DIVISION	
MINUS IN REMAINDER OF CROW RESERVATION DIVISION	
ED 3030E	
ED 3039E	
ED 3040E	
ED 3046E	5,403
IN HARDIN DIVISION	
IN HARDIN CITY	
IN BNA 9901	
BLOCK 137	4
BLOCK GROUP 2	791
BLOCK GROUP 3	659
BLOCK GROUP 4	782
IN REMAINDER OF HARDIN DIVISION	
ED 3027Y	9
ED 3027Z	190
ED 3028	176
ED 3029	51
TOTAL FOR HOUSE DISTRICT 99	8,065
RELATIVE DEVIATION	+2.52%

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HOUSE DISTRICT 100, WITH RECOMMENDED AMENDMENTS

IN BIG HORN COUNTY	
IN CROW RESERVATION DIVISION	
IN REMAINDER OF CROW RESERVATION DIVISION	
ED 3030E	114
ED 3039E	34
ED 3040E	60
ED 3046E	34
IN HARDIN DIVISION	
IN HARDIN CITY	
IN BNA 9901	
BLOCK GROUP 1	
MINUS BLOCK 137	1,064
IN REMAINDER OF HARDIN DIVISION	
BNA 9901 (PT)	4
ED 3025	79
ED 3026	72
ED 3027X	368
NORTHERN CHEYENNE DIVISION	1,013
TONGUE RIVER DIVISION	189
IN POWDER RIVER COUNTY	
BROADUS DIVISION	1,321
OTTER DIVISION	474
IN ROSEBUD COUNTY	
ASHLAND DIVISION	564
NORTHERN CHEYENNE DIVISION	2,651
TOTAL FOR HOUSE DISTRICT 100	8,041
RELATIVE DEVIATION	+2.21%

HOUSE DISTRICT 70, WITH RECOMMENDED AMENDMENTS

IN SILVER BOW COUNTY	
IN BUTTE-SILVER BOW	
IN BNA 9901	
BLOCK 913 THRU BLOCK 922	419
IN BNA 9904	
BLOCK 701	59
BLOCK 702	48
BLOCK 703	0
BLOCK GROUP 8	1,109
BLOCK 913	58
BLOCK 914	10
BLOCK 915	60
BLOCK 916	25
BLOCK 917	16
BLOCK 918	0
BLOCK 948	192
BLOCK 949	91
BLOCK 950	10
BLOCK 951	22
BNA 9905 (PT)	
MINUS BLOCK GROUP 7	
MINUS BLOCKS 901 THRU 904	4,219

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HOUSE DISTRICT 70, WITH RECOMMENDED AMENDMENTS (Continued)

IN BNA 9906	
BLOCK GROUP 2	868
BLOCK 305	3
IN SILVER BOW NORTHWEST DIVISION	
IN BUTTE-SILVER BOW	
BNA 9904 (PT)	321
IN SILVER BOW SOUTH DIVISION	
IN BUTTE-SILVER BOW	
IN BNA 9905 (PT)	
BLOCKS 102 THRU 112	66
BLOCKS 119 THRU 132	206
TOTAL FOR HOUSE DISTRICT 70	7,632
RELATIVE DEVIATION	-.44%

HOUSE DISTRICT 74, WITH RECOMMENDED AMENDMENTS

IN SILVER BOW COUNTY	
IN BUTTE DIVISION	
IN BUTTE-SILVER BOW	
IN BNA 9905	
BLOCK GROUP 7	415
BLOCKS 901 THRU 904	207
IN BNA 9906	
BLOCK GROUP 3	
MINUS BLOCK 305	437
BLOCK GROUP 4	284
BLOCK GROUP 5	701
BLOCK GROUP 6	631
BLOCK GROUP 7	825
BLOCK GROUP 8	344
BLOCK GROUP 9	443
IN BNA 9907	
BLOCK GROUP 5	900
BLOCK 706	222
BLOCK GROUP 8 (PT)	1,451
BLOCK GROUP 9	148
SILVER BOW SOUTH DIVISION	
MINUS IN BUTTE-SILVER BOW	
BLOCKS 102 THRU 112	
BLOCKS 119 THRU 132	512
TOTAL FOR HOUSE DISTRICT 74	7,520
RELATIVE DEVIATION	-4.41%

REP. JOE BRAND, Chairman
House State Administration

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HOUSE RESOLUTION NO. 3

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO CREATE A HOUSE STANDING COMMITTEE ON HUMAN SERVICES AND AGING AND A HOUSE STANDING COMMITTEE ON BUSINESS AND LABOR; AMENDING HOUSE RULE H3-1.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following amendment to House Rule H3-1 is adopted:

"H3-1. The standing committees of the house are as follows:

1. Agriculture, Livestock and Irrigation
2. Appropriations
3. Business and *Labor*
4. Education and Cultural Resources
5. Fish and Game
6. Highways and Transportation
7. Judiciary
8. Legislative Administration/Bills and Journal
9. Local Government
10. Natural Resources
11. Human Services *and Aging*
12. Rules
13. State Administration
14. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on."

HOUSE RESOLUTION NO. 5

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING THE FIRST SPECIAL SERVICE FORCE FOR ITS SACRIFICES AND ACCOMPLISHMENTS DURING WORLD WAR II AND SUPPORTING THE PLACEMENT OF A MEMORIAL DURING THE CELEBRATION OF THE 40TH ANNIVERSARY OF THE ALLIED LIBERATION OF ROME.

WHEREAS, June 4, 1984, will be the 40th anniversary of the Allied liberation of the Eternal City of Rome, Italy; and

WHEREAS, the First Special Service Force, a paracommando brigade composed of American and Canadian troops that was formed and trained

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in Montana, was the first Allied unit to breach the gates of Rome, which led to the liberation of the city; and

WHEREAS, a proper celebration and placing of a memorial is planned, with participation by 14 nations, to commemorate the 40th anniversary of this historic event; and

WHEREAS, veterans of the First Special Service Force and valiant Italian resistance alongside whom they fought in the battle to liberate Rome intend to place a tablet dedicated to their comrades in arms who died in that campaign; and

WHEREAS, active units of the Armies of Italy, Canada, and the United States will participate in this dedication ceremony to exemplify the friendship and unity of the three countries.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That in proud and grateful acknowledgement of the splendid combat record and accomplishments of the First Special Service Force, the citizens of Montana be urged to reflect on the sacrifices of these courageous men and to assist them in all ways toward the success of this 40th anniversary event.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution, asking their commitment to, assistance in, and approval of this international event, to the Honorable John Melcher, Senator from Montana; the Honorable Max Baucus, Senator from Montana; the Honorable Pat Williams, Representative from the First Congressional District; and the Honorable Ron Marlenee, Representative from the Second Congressional District.

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APPENDICES

1 Ballot Issues

(a) Constitutional Amendment 12

(b) Initiative 91

(c) Initiative 95

2 First Special Session 47th Legislature
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3 Second Special Session 47th Legislature
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APPENDIX

CONSTITUTIONAL AMENDMENTS

CONSTITUTIONAL AMENDMENT NO. 12

By Chapter 611, Laws of 1981, the Legislature proposed an amendment to the Constitution of the State of Montana to provide that the Secretary of State shall conduct a poll of all Legislators when the Legislature is not in session and the Governor vetoes a bill.

Chapter 611 was approved by the following vote at the General Election held November 2, 1982:

For:	147,463
Against:	131,560

The title and text of Chapter 611 follow.

An Act to submit to the qualified electors of Montana an amendment to Article VI, Section 10, of The Montana Constitution to provide that the Secretary of State shall conduct a poll of all Legislators when the Legislature is not in session and the Governor vetoes a bill.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VI, section 10, of the Constitution of the State of Montana is amended to read:

"Section 10. **Veto power.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members *of each house* present approve the bill, it shall become law.

(4) *(a)* If the legislature is not in session when the governor vetoes a bill *approved by two-thirds of the members present*, he shall return the

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bill with his reasons therefor to the *secretary of state. The secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.*

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill."

Section 2. **Effective date.** This amendment is effective immediately upon approval by the electorate of Montana.

Section 3. **Submission to electorate.** When this amendment is submitted to the qualified electors of Montana, there shall be printed on the ballot the full title of this act and the following words:

☐ FOR allowing the legislature to override a post-session veto through a poll of its members by the secretary of state.

☐ AGAINST allowing the legislature to override a post-session veto through a poll of its members by the secretary of state.

INITIATIVES

INITIATIVE NO. 91

By Initiative the people proposed a law that would declare that the people of Montana are opposed to the placement of MX missiles in this state. It also expresses opposition to further testing, development or deployment of nuclear weapons by any nation. Passage of this initiative is an expression of the opinion of the voters in Montana that would have no legal effect. The Initiative was approved by the following vote at the General Election held November 2, 1982:

For:	168,594
Against:	125,092

The text of the Initiative law follows.

Be it enacted by the People of the State of Montana:

Section 1. **Declaration of policy.** It is hereby declared that the people of Montana are opposed to:

(1) the placement of MX missiles in Montana; and

(2) any further testing, development, or deployment of nuclear weapons by any nation.

Section 2. **Conveyance to national authorities.** The Secretary of State of the State of Montana is hereby directed to immediately convey a copy of this initiative to the Congress and the President of the United States of America.

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Section 3. **Effective date.** This initiative is effective January 1, 1983.

☐ FOR the initiative — I oppose the placement of MX missiles in Montana and the further testing, development or deployment of nuclear weapons by any nation.

☐ AGAINST the inititative — I do not oppose the placement of MX missiles in Montana and the further testing, development or deployment of nuclear weapons by any nation.

INITIATIVE NO. 95

By Initiative the people proposed that the state would take one-fourth (25%) of all future deposits to the permanent coal tax trust and invest it in Montana's economy. The state would make no direct loans, but would emphasize investments in new or expanding interprises.

The initiative would also create an economic development fund, using a portion of the interest from the coal tax trust. After determining how much interest to allocate to the economic development fund the legislature may spend money from the fund to support economic development in the state. The Initiative was approved by the following vote at the General Election held November 2, 1982:

For:	207,629
Against:	84,875

The text of the Initiative law follows:

Be it enacted by the People of the State of Montana:

Section 1. **Purpose of the coal tax trust fund.** The people of Montana establish that the intent of the permanent coal tax trust fund, as created by Article IX, section 5 of the Montana Constitution, is:

(1) to compensate future generations for the loss of a valuable and depletable resource and to meet any economic, social, and environmental impacts caused by coal development not otherwise provided for by other coal tax sources; and

(2) to develop a stable, strong and diversified economy which meets the needs of Montana residents both now and in the future while maintaining and improving a clean and healthful environment as required by Article IX, section 1 of the Montana Constitution.

Section 2. **Use of the coal tax trust fund for economic development.** Objectives for investment of the permanent coal tax trust fund are to diversify, strengthen and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.

Section 3. **Investment of 25 percent of the coal tax trust fund in the Montana economy.** (1) Twenty-five percent of all revenue deposited after June 30, 1983 into the permanent coal tax trust fund established in section 17-6-203(5), MCA, shall be invested in the Montana economy

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with special emphasis on investments in new or expanding locally-owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, as required by section 17-6-201(1), MCA, the long-term benefit to the Montana economy shall be considered.

(3) The State may not use this revenue to make direct loans.

(4) The Legislature may provide additional procedures to implement this section.

Section 4. **Establishment of a Montana economic development fund.** A Montana economic development fund is created. A portion of the interest income from the permanent coal tax trust fund created in section 17-6-203(5), MCA, shall be deposited in the fund as determined by the Legislature. Monies, if any, appropriated by the Legislature from the Economic Development Fund shall be used only for programs consistent with the objectives in [section 2].

Section 5. **Severability.** If part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date.** This act shall be effective July 1, 1983.

☐ FOR investing past of the coal severance tax permanent trust fund in the Montana economy and creating a Montana economic development fund.

☐ AGAINST investing part of the coal severance tax permanent trust fund in the Montana economy and creating a Montana economic development fund.

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SESSION LAWS

ENACTED BY THE

Forty-seventh Legislature

IN SPECIAL

SESSION

November 16 through 24, 1981

STATE OF MONTANA

EXPLANATORY NOTE:

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.

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SESSION LAWS

CHAPTER NO. 1

AN ACT TO REVISE THE LAWS RELATING TO RELINQUISHMENT OF CHILDREN FOR ADOPTION; AMENDING SECTIONS 40-6-125, 40-8-103, AND 40-8-109, MCA; REPEALING SECTIONS 40-6-132 THROUGH 40-6-134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Relinquishment of parental rights — form, execution, and revocation.** (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by executing a relinquishment by which all parental rights to the child are voluntarily relinquished to an agency of the state of Montana or a licensed adoption agency.

(2) Except as otherwise provided in this section, a relinquishment shall be by a separate instrument executed before a notary public.

(3) If the person from whom a relinquishment is required is a member of any of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

(5) Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian, the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana or the licensed adoption agency to which the relinquishment was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of a person who executed a relinquishment and of the agency of the state of Montana or licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the relinquishment should

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be revoked. A relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition shall be made.

Section 2. Section 40-6-125, MCA, is amended to read:

"40-6-125. Children born out of wedlock — relinquishment — consent. (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may *execute a relinquishment terminating her rights to the child. If the mother relinquishes the child, the agency of the state of Montana or the licensed adoption agency to whom the child is relinquished may file* a petition *under this part or a petition of dependency or neglect* pursuant to *Title 41, chapter 3. Pending disposition of the* petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her execution of a relinquishment shall be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this part."

Section 3. Section 40-8-103, MCA, is amended to read:

"40-8-103. Definitions. As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of social and rehabilitation services, as established and provided for in Title 2, chapter 15, part 22.

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, brother or sister, niece or nephew, or first cousin.

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(9) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(10) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(11) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency *or individual* pursuant to *[section 1] or 40-8-109, whichever is applicable.*"

Section 4. Section 40-8-109, MCA, is amended to read:

"40-8-109. Placement for adoption by parents. (1) No parent may make a placement of a child for adoption with *an individual* who is not a stepparent or a member of the child's extended family unless the parent files with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; and

(b) a relinquishment of parental rights to the prospective adoptive parents executed voluntarily and in accordance with [section 1(2) through (4)].

(2) The notice of parental placement *and the relinquishment* shall be filed prior to a parent's placement of the child with *an individual* who intends to adopt the child. The notice of parental placement shall contain the following information:

(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in (a) through (c) of subsection (2).

(3) Upon receipt of a notice of parental placement *and a relinquishment*, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

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(c) that the birth parents, the prospective adoptive parents, and their representatives have agreed in writing to provide the court with sworn affidavits containing itemized statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

(4) Within 45 days of filing of the notice of parental placement *and the relinquishment*, the court shall schedule a hearing to consider the proposed placement.

(5) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the agency or person who conducted the investigation under subsection (3).

(b) The hearing shall be closed to all persons except those persons entitled to notice and their representatives or counsel.

(6) If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents. The prospective adoptive parents must file their petition to adopt within 30 days of the order.

(7) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child."

Section 5. **Repealer.** Sections 40-6-132 through 40-6-134, MCA, are repealed.

Section 6. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 40, chapter 6, part 1, and the provisions of Title 40, chapter 6, part 1, apply to section 1.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved November 25, 1981.

CHAPTER NO. 2

AN ACT AMENDING THE DEFINITION OF A DEPENDENT CHILD AND ELIMINATING THE UNEMPLOYMENT OF A PARENT AS AN ELIGIBILITY CRITERION FOR AID TO DEPENDENT CHILDREN; AMENDING SECTION 53-4-201, MCA; REPEALING SECTIONS 53-4-234, 53-4-235, AND 53-4-236, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-201, MCA, is amended to read:

"53-4-201. Definitions. (1) (a) The term "dependent child", for public assistance purposes, means:

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(i) a child under the age of 18; or

(ii) a person under the age of *19* who is a student under the regulations prescribed by the department.

(b) The child ((a)(i) or (a)(ii) above) must be deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent and be living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin in a place of residence maintained by one or more of such relatives as his or their own home.

(2) The term "aid to dependent children" means money payments with respect to or payments made for medical care in behalf of a dependent child or dependent children, including money payments or payments made for medical care for any month to meet the needs of a relative with whom a dependent child is living if money payments have been made with respect to such child for such month. The term shall also include emergency assistance to families with children as provided by the federal Social Security Act.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 2. **Repealer.** Sections 53-4-234, 53-4-235, and 53-4-236, MCA, are repealed.

Section 3. **Effective date.** This act is effective on January 1, 1982.

Approved November 25, 1981.

CHAPTER NO. 3

AN ACT TO ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO CONSIDER THE INCOME AND RESOURCES OF STEPPARENTS AND OTHER INDIVIDUALS LIVING IN THE HOME FOR THE PURPOSE OF ADMINISTERING AID TO DEPENDENT CHILDREN; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Stepparent resources and income.** Notwithstanding the provisions of 40-6-217, in the administration of this part the department may consider the income and resources of stepparents and other individuals who reside in the home as resources and income available to the household.

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Section 2. **Codification instruction.** Section 1 is intended to be codified as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53, chapter 4, part 2, apply to section 1.

Section 3. **Effective date.** This act is effective on January 1, 1982.

Approved November 25, 1981.

CHAPTER NO. 4

AN ACT PROVIDING FOR ESTABLISHMENT OF RULES AND STANDARDS FOR GENERAL RELIEF ASSISTANCE BY COUNTY BOARDS OF PUBLIC WELFARE WITH THE APPROVAL OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES; PROVIDING THAT GENERAL RELIEF ASSISTANCE MAY BE PROVIDED BY DISBURSING ORDERS; AMENDING SECTIONS 53-3-301 AND 53-3-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-3-301, MCA, is amended to read:

"**53-3-301. Amount of general relief assistance to be determined by county board.** The amount of general relief assistance granted any person or family shall be determined by the county board of public welfare, according to rules and standards of assistance established by *the board and approved by* the department."

Section 2. Section 53-3-302, MCA, is amended to read:

"**53-3-302. Payment by check or disbursing order.** All general relief disbursements by county departments of public welfare shall be by warrant or check. *General assistance needs may be met through disbursing orders that must subsequently be reimbursed through county payment procedures. Disbursing* orders must be written in such form that the goods and *services* to be provided may be furnished by any regular dealer in such goods and *services.*"

Section 3. **Effective date.** This act is effective on January 1, 1982.

Approved November 25, 1981.

CHAPTER NO. 5

AN ACT TO CHANGE INTERVALS BETWEEN INSPECTION OF LICENSED HEALTH CARE FACILITIES FROM 1 TO 3 YEARS; TO REQUIRE REPORTS FROM FACILITIES APPLYING FOR LICENSE RENEWAL IN ORDER TO DOCUMENT THAT THEY MET MINIMUM STANDARDS; AMENDING SECTION 50-5-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-204, MCA, is amended to read:

"**50-5-204. Issuance and renewal of licenses — inspections.** (1) *After* receipt of a new or renewal application *and a determination by*

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the department *that the facility meets* minimum standards and the proposed *or existing* staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards.

(2) The department must inspect a new facility before an initial license is granted.

(3) An application for renewal of a license must be accompanied by a report, on forms provided by the department, containing such information as the department considers necessary to determine whether minimum standards are being met.

(4) The department may inspect a licensed health care facility whenever it considers it necessary and shall inspect each licensed facility at least once within the 3 years following the date of its last inspection. The entire premises *of a licensed facility* shall be open to inspection, and access to all records shall be granted at all reasonable times."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Effective date.** This act is effective on January 1, 1982.

Approved November 25, 1981.

CHAPTER NO. 6

AN ACT TO CHANGE THE INTEREST FOR DELINQUENT PROPERTY TAX PAYMENT FROM 5/6 OF 1 PERCENT PER MONTH FOR THE FIRST $3,000 PER TAXPAYER OF EACH YEAR'S DELINQUENT TAXES AND 1 PERCENT PER MONTH FOR EACH YEAR'S DELINQUENT TAXES IN EXCESS OF $3,000 PER TAXPAYER TO 5/6 OF 1 PERCENT PER MONTH FOR ALL DELINQUENT PROPERTY TAXES UNTIL SUCH TAXES ARE PAID; AMENDING SECTIONS 15-16-101, 15-16-102, AND 15-17-303, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notice — manner of publication. (1) Within 10 days after the receipt of the assessment book, the county treasurer must publish a notice specifying:

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(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on November 30 next thereafter and that unless paid prior thereto the amount then due will be delinquent and will draw interest at the rate of *5/6 of* 1% per month from and after such delinquency *until paid* and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on May 31 next thereafter and that unless paid prior to said date said taxes will be delinquent and will draw interest at the rate of *5/6 of* 1% per month from and after such delinquency *until paid* and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) He must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes and assessments due the current year and the amount due and delinquent for other years. The written notice shall include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) itemized city services and special improvement district assessments collected by the county;

(e) the number of the school district in which the property is located; and

(f) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(d) ready for mailing.

(4) The notice in every case must be published for 2 weeks in some weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. The failure to publish or post notices does not relieve the taxpayer from any of his liabilities. Any failure to give notice of the tax due for the current year or of delinquent tax will not affect the legality of the tax."

Section 2. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment — penalty for delinquency. All taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become

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delinquent and shall draw interest at the rate of *5/6 of* 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of *5/6 of* 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty."

Section 3. Section 15-17-303, MCA, is amended to read:

"15-17-303. Assignment of rights of county. (1) At any time after any parcel of land has been bid upon by the county as the purchaser thereof for taxes as provided in 15-17-207, the same not having been redeemed, the county treasurer shall assign all the right of the county therein acquired at such sale to any person who pays the amount for which the same was bid, with interest upon the original tax at the rate of 5/6 of 1% per month and the amount of all subsequent delinquent taxes, penalties, costs, and interest as provided by law upon the same from time to time when such tax became delinquent. The county treasurer shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I, ..., the treasurer of the county of ...., state of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19.. in the county of .... and which sale was held on the .... day of ...., 19.., for the purpose of liquidating assessment, the following described parcel of land, situate in the county of ...., state of Montana, to wit: (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid. Accordingly, the whole amount of the property assessed and described as above was struck off to the county of .... as purchaser thereof for the sum of ...., and the same still remaining unredeemed, and on this day .... having paid into the treasury of such county the amount for which the same was bid, together with all subsequent delinquent taxes, penalties, costs, and interest amounting in all to .... dollars.

Now, therefore, in consideration thereof and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title, and interest of the county of ...., state of Montana, acquired in such lands under and by virtue of the sale to ...., his heirs and assigns forever, together with all the rights, powers, and privileges of the county of .... to take steps to receive a deed thereof or receive payment in case of a redemption; subject, however, to redemption as provided by law.

Witness my hand and official seal of office this .... day of ...., 19...
..... (County Treasurer)"

(2) If the certificate described in subsection (1) becomes lost by accident or destroyed by the assignee, the county treasurer shall issue a duplicate certificate to the assignee after the county treasurer is convinced that the certificate has been lost or destroyed and after the assignee has made an affidavit to that effect.

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(3) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued by March 5, 1917, and the holder of any certificate described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at tax sale may now have.

(4) As to any land received by the county in exchange, the same may be sold or leased the same as might have been done with the lands exchanged."

Section 4. **Effective date and applicability.** This act is effective on passage and approval and applies to real and personal property taxes that become due on or after November 30, 1981, or that became due prior to November 30, 1981, and remain unpaid on or after November 30, 1981.

Approved November 25, 1981.

CHAPTER NO. 7

AN ACT TO AUTHORIZE APPROVED TRAINING WHEN A CLAIMANT IS ELIGIBLE FOR TRADE READJUSTMENT BENEFITS AND TO LIMIT THE NUMBER OF WEEKS' DURATION OF TRADE READJUSTMENT BENEFITS IF THE CLAIMANT IS ELIGIBLE FOR EXTENDED BENEFITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Approved trade readjustment training.** (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because he is in training approved under Section 236(a)(1) of the federal Trade Act of 1974;

(b) in which he is in such approved training by reason of leaving work to enter such training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974.

Section 2. **Limitations on weeks of combined extended benefits and trade readjustment allowances.** Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends

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within an extended benefit period, the remaining balance of extended benefits that such individual would but for this section be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

Section 3. **Codification instruction.** Sections 1 and 2 are intended to be codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to sections 1 and 2.

Approved November 30, 1981.

CHAPTER NO. 8

AN ACT TO AUTHORIZE THE UNEMPLOYMENT INSURANCE DIVISION TO INQUIRE CONCERNING CHILD SUPPORT, TO NOTIFY THE APPLICABLE CHILD SUPPORT ENFORCEMENT AGENCY AND UNDER CERTAIN CIRCUMSTANCES TO TRANSMIT A PORTION OF THE UNEMPLOYMENT INSURANCE BENEFITS TO THE ENFORCEMENT AGENCY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Child support interception of unemployment benefits.** (1) For purposes of this section, the following definitions apply:

(a) "Unemployment compensation" means any compensation payable under the Montana unemployment insurance law, including amounts payable by the division pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(b) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in Section 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act.

(c) "State or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan provided for in subsection (1)(b).

(2) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not he owes child support obligations. If an individual discloses that he owes child support obligations and the individual is determined to be eligible for unemployment compensation, the division shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

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(3) The division shall deduct and withhold from any unemployment compensation payable to an individual owing child support obligations:

(a) the amount specified by the individual to the division to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the division under Section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in Section 462(e) of the Social Security Act, properly served upon the division.

(4) The division shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the division under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

Section 2. **Codification instruction.** Section 1 is intended to be codified an an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to section 1.

Section 3. **Effective date.** This act is effective on passage and approval.

Approved November 30, 1981.

CHAPTER NO. 9

AN ACT TO ELIMINATE REFERENCE TO THE NATIONAL "ON" AND "OFF" INDICATOR AND FURTHER DEFINE THE CALCULATION OF RATE OF INSURED UNEMPLOYMENT; ESTABLISHING A NEW STATE "ON" AND "OFF" EXTENDED BENEFIT INDICATOR; AMENDING SECTIONS 39-51-2501 AND 39-51-2504 THROUGH 39-51-2506, MCA; REPEALING SECTIONS 39-51-2502 AND 39-51-2503, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2501, MCA, is amended to read:

"39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

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(1) "Extended benefit period" means a period which:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period.

(2) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims *for regular benefits* in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of his reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (2)(a) shall be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(3) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in his eligibility period.

(5) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85, in his current benefit year that includes such week; provided, that for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits;

(b) his benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week;

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(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954."

Section 2. Section 39-51-2504, MCA, is amended to read:

"39-51-2504. State "on" indicator — when. There is a state "on" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) (a) the rate of insured unemployment equals or exceeds 5% for any such week and the immediately preceding 12 weeks; *and*

(b) the insured unemployment rate equals or exceeds 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; *or*

(2) *if the rate of insured unemployment for such week is 5% or more but the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years is less than 120%, the insured unemployment rate for such week and the immediately preceding 12 weeks is 6% or more.*"

Section 3. Section 39-51-2505, MCA, is amended to read:

"39-51-2505. State "off" indicator — when. There is a state "off" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter *is less than 5%; or*

(2) the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years *is less than 120%.*"

Section 4. Section 39-51-2506, MCA, is amended to read:

"39-51-2506. Beginning and termination of extended benefit period — announcement of. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement."

Section 5. **Repealer.** Sections 39-51-2502 and 39-51-2503, MCA, are repealed.

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Section 6. **Effective dates.** (1) Section 1 is effective on passage and approval.

(2) Sections 2 and 3 are effective on September 26, 1982.

Approved November 30, 1981.

CHAPTER NO. 10

AN ACT ALLOWING AID TO DEPENDENT CHILDREN ASSISTANCE PAYMENTS TO NEEDY PREGNANT WOMEN NO EARLIER THAN THE THIRD MONTH PRIOR TO THE MONTH IN WHICH THE CHILD IS EXPECTED TO BE BORN; AMENDING SECTION 53-4-231, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-231, MCA, is amended to read:

"**53-4-231. Eligibility.** *(1)* Assistance shall be granted under this part to any dependent child, as defined in 53-4-201, who is in need of such assistance.

(2) Aid to dependent children assistance payments may be made to a needy pregnant woman with no other children receiving such payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born."

Section 2. **Effective date.** This act is effective on January 1, 1982.

Approved December 1, 1981.

CHAPTER NO. 11

AN ACT TO PROVIDE THAT A COUNTY WILL RECEIVE A 50 PERCENT STATE MATCHING GRANT-IN-AID IF IT HAS A WORK PROGRAM AFTER EXPENDING 8 MILLS OF THE 13.5 MILL COUNTY POOR FUND FOR ASSISTANCE TO THE NEEDY; AMENDING SECTION 53-2-321, MCA; PROVIDING AN EFFECTIVE DATE AND TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-321, MCA, is amended to read:

"**53-2-321. County authorized to care for indigent and levy taxes therefor.** The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law to provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this title, or the otherwise dependent poor of the county; erect and maintain hospitals therefor or otherwise provide

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for the same; and for said purposes to levy and collect annually a tax on property not exceeding 13 ½ mills, *except as provided in [section 2], that* shall be made at the time other tax levies are made on property, as provided by law."

Section 2. **Matching grants from state funds to counties.** (1) A county may apply to the department for a matching grant-in-aid. The matching grant-in-aid is a state contribution of 50% of the county cost of providing assistance to the needy for all lawful poor fund purposes, except subsidy to a medical facility.

(2) The grant shall be awarded if the board of county commissioners or an executive officer of a county makes written application to the department certifying:

(a) that the county has budgeted for a mill levy in excess of 8 mills for the county poor fund;

(b) that the county has, or within a reasonable time will have, expended from the poor fund an amount raised by 8 mills;

(c) that such expenditures were reasonable and necessary, according to criteria set by the department in its rules adopted for such purposes, for the county to meet its obligations under law to provide assistance to the needy; and

(d) that the county participates in or operates a work program, as authorized by 53-3-304, that has been approved by the department.

(3) Upon determination that a county has met the conditions for a matching grant-in-aid, the state shall financially participate in 50% of all further lawful poor fund expenditures, except those for a medical facility subsidy, until such time that a county qualifies for an emergency grant-in-aid. The department may at its discretion advance funds to a county for the state's matching contribution for poor fund expenditures, or it may reimburse a county for such expenditures.

(4) (a) A county receiving a matching grant-in-aid may not levy more than ½ mill for each 1-mill expenditure equivalent over 8 mills for poor fund purposes except to subsidize a medical facility.

(b) For the purposes of 53-2-323, a county has exhausted all sources of revenue whenever its lawful poor fund expenditures (other than a subsidy for a medical facility) plus the state matching contribution has reached an amount equivalent to the revenues that could have been raised by the maximum mill levy authorized by 53-2-321.

(5) The department may adopt rules to implement this section.

Section 3. **Effective date.** This act is effective July 1, 1982.

Section 4. **Termination date.** This act shall terminate on June 30, 1983.

Approved December 1, 1981.

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APPROPRIATIONS

ENACTED BY THE

Forty-seventh Legislature

IN SPECIAL

SESSION

STATE OF MONTANA

HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION OF THE FORTY-SEVENTH LEGISLATURE CONVENING ON NOVEMBER 16, 1981, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following amounts are appropriated from the general fund for fiscal year 1982 for the operation of the special session of the forty-seventh legislature convening on November 16, 1981:

House of Representatives	$242,000
Senate	153,000
Legislative Council	25,000

Section 2. **Effective date.** This act is effective on passage and approval.

Approved November 19, 1981.

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HOUSE BILL NO. 2

AN ACT TO AMEND HOUSE BILL NO. 500, LAWS OF 1981, TO APPROPRIATE MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. House Bill No. 500, Laws of 1981, is amended to read:

"Section 1. **Short title.** This act may be cited as the "General Appropriations Act of 1981".

Section 2. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Approving authority" means the governor or his designated representative for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; appropriate legislative committees for legislative branch agencies; or the board of regents for the university system.

(3) "University system unit" means the board of regents, office of the commissioner of higher education, the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural experiment station with central offices at Bozeman, the forestry and conservation experiment station with central offices at Missoula, the cooperative extension service with central office at Bozeman, or the bureau of mines and geology with central office at Butte.

Section 3. **Budget amendments.** (1) The approving authority may approve a budget amendment to spend funds that were not available for consideration by the legislature but have become available from a source other than the state's general fund or earmarked revenue fund and other than receipts to the state from the United States government made available under provisions of P.L. 94-488, the federal Revenue Sharing Extension Act or any extension or modification of that act. Each budget amendment shall be submitted to the budget director and the office of legislative fiscal analyst.

(2) A budget amendment may be approved to spend money in the earmarked revenue fund only if the approving authority certifies that an emergency justifies the expenditure.

(3) A budget amendment may be approved for a time period greater than one fiscal year but not to exceed the biennium ending June 30, 1983.

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Budget amendments for greater than one fiscal year shall itemize planned expenditures by fiscal year.

Section 4. **Amendment procedures.** (1) In approving a budget amendment, the approving authority shall:

(a) certify specific additional services to be provided as a result of a higher expenditure level;

(b) certify that no other alternative is available to provide the additional services;

(c) certify that the additional proposed services have not been considered and rejected by the legislature;

(d) certify that no commitment, implied or otherwise, is made for increased future general fund support;

(e) specify criteria for evaluating the effectiveness of the additional services provided.

(2) The additional funds are appropriated contingent upon total compliance with all budget amendment procedures.

Section 5. **Budget requests.** Sufficient funds are appropriated in this act to enable each agency to submit its 1985 biennium budget request to the budget director and the legislative fiscal analyst pursuant to the time schedule established in 17-7-112(1). If any agency fails to submit its final, complete budget request by the deadlines established in 17-7-112(1), the expenditure authority herein granted shall be reduced or rescinded by the budget director unless the agency director certifies that an emergency situation has precluded a timely budget presentation and the budget director approves an extension not to exceed 30 days.

Section 6. **Detailed budget information.** Within 10 days after the 48th legislature convenes in regular session, the budget director and the legislative fiscal analyst shall mutually exchange expenditure recommendations by object of expenditure to the second level of detail and by funding source detailed by treasury fund. This information shall be filed in the respective offices and available to members of the legislature and the general public.

Section 7. **Expenditure limit.** Expenditures may not exceed appropriations.

Section 8. **Other appropriated funds.** Unless otherwise indicated herein, the appropriations made under the column heading "Other Appropriated Funds" are from funds within the earmarked revenue fund, the federal and private revenue fund, or the revolving fund that accrue under provisions of law to the expending agency. *The social services, low income energy assistance, maternal and child health services, preventive health, community services, elementary and secondary education, community development, and alcohol, drug abuse, and mental health block grants have been considered and the funds applicable to the federal and private revenue fund have been appropriated. There are other funds which pass through the federal and private grant clearance fund which are not*

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required by section 17-2-102(5), MCA, to have a specific legislative appropriation, these funds considered by the special session of the 47th legislature from the above eight block grants are appropriated for purposes of this bill.

Section 9. **Operating budgets.** Expenditures may be made only in accordance with operating budgets approved by the approving authority. The respective appropriations are contingent upon approval of the operating budget by July 1 of each fiscal year. Each operating budget shall include expenditures for each agency program detailed at least by personal services, operating expenses, equipment, benefits and claims, transfers, and local assistance.

Section 10. **Access to records.** No funds appropriated by this act may be expended for any contract, written or oral, for services with a nonstate entity for services to be provided by the nonstate entity to members of the public on behalf of the state unless such contract contains a provision allowing access to those records of the nonstate entity as may be necessary for legislative audit and analysis purposes in determining compliance with the terms of the contract. Each such contract may be unilaterally terminated by the state, and each contract shall so provide upon refusal of the nonstate entity to allow access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13.

Section 11. **Reduction of appropriation.** In the event of a shortfall in revenue, the governor may reduce *appropriations. General fund appropriations may be reduced* by not more than 15%. *The following* appropriations *may not be reduced*:

(1) payment of interest and retirement of state debt;

(2) the legislative branch;

(3) the judicial branch;

(4) public schools; or

(5) salaries of elected officials during their term of office.

Section 12. **Severability.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of this act.

Section 13. **Reversion.** Notwithstanding other provisions of law, the unexpended balance of each appropriation reverts to the fund from which it was appropriated at the end of each fiscal year unless otherwise provided in this act.

Section 14. **Other funds to offset general fund.** The approving authority shall decrease the general fund appropriation of the agency by the amount of funds received from other sources in excess of the appropriation provided in this act unless such action is expressly contrary to state or federal law, rule, or contract or the approving authority certifies that the services to be funded by the additional funds are significantly different from those for which the agency has received an appropriation.

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Section 15. **National conference of state legislatures.** Agencies may participate in the activities and programs of the national conference of state legislatures within existing appropriations.

Section 16. **Coal tax trust income.** Interest income from the coal tax constitutional trust fund established under Article IX, section 5 of the Montana Constitution is hereby appropriated to the general fund for use during the biennium ending June 30, 1983. The portion of the general fund which represents this appropriation is appropriated to the school foundation program in HB 611 ($16,000,000), the highway earmarked revenue account ($16,469,324), and to the department of commerce in HB 500, items 4, 5, 6, and 8 ($1,580,676).

Section 17. **Amounts appropriated for audits may be transferred between fiscal years.**

Section 18. **Totals not appropriations.** The totals shown in the act are for informational purposes only and are not appropriations.

Section 19. **Appropriations.** The following money is appropriated only for the purposes shown for the respective fiscal years:

A. LEGISLATIVE, JUDICIAL, AND ADMINISTRATIVE AGENCIES

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
LEGISLATIVE AUDITOR	1,008,825	861,675	1,266,805	783,425
LEGISLATIVE FISCAL ANALYST	489,178		506,639	
LEGISLATIVE COUNCIL	1,905,829	318,200	1,801,835	42,000

The general fund appropriation for FY 1982 includes funds for CSG and NCSL travel, interim studies, Forestry Task Force, Revenue Oversight Committee, Administrative Code Committee, District and Apportionment Commission, coal tax oversight subcommittee, and Constitutional Convention Proceedings publication in the total amount of $347,710 which is a biennial appropriation.

The 1982 appropriation for the legislative council contains $6,000 in general fund for the coal tax oversight subcommittee. This biennial appropriation is contingent upon passage of SB 487.

ENVIRONMENTAL QUALITY COUNCIL	151,807		166,178	
CONSUMER COUNSEL		460,752		479,237
JUDICIARY				
1. Supreme Court Operations	990,113		980,656	

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
2. Boards and Commissions	141,182		145,269	
3. Law Library	279,969		325,813	
4. District Courts	1,537,532		1,545,622	
5. Moving Expenses			31,342	
6. Moving Expenses: Rent Increase			130,301	
7. Montana Reports	42,000		40,000	
8. Audit	10,000			
9. Water Courts Supervision		227,543		349,762
Total Judiciary	3,000,796	227,543	3,199,003	349,762

If federal funds should be received for previously federal funded activities that have been general funded this biennium, a like amount of general fund, less matching requirements, shall be reverted to the general fund.

GOVERNOR'S OFFICE

1. Executive Office	761,732	*18,450*	757,638	
2. Mansion Maintenance	78,986		70,721	
3. Air Transportation	90,124		99,969	
4. Office of Budget and Program Planning	643,626		654,946	
5. Legal Jurisdiction	59,378		65,698	
6. Lieutenant Governor	173,141		179,332	
7. Citizens' Advocate	65,864		68,654	
8. Board of Visitors	46,813		48,545	
9. Old West Regional Commission Dues	*15,000*			
10. Engine Replacement	70,000			
11. Audit	16,000			

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
12. Contingency - Vacancy Savings	1,600,000	———	———	———
Total Governor's Office	*3,620,664*	*18,450*	*1,945,503*	

Federal indirect cost reimbursements shall be reverted to the general fund.

Item 10 is an expense for the biennium.

Item 12, a biennial appropriation, is solely for instructional faculty salaries in the six college and university units and shall only be expended if vacancy savings are not realized. As a further condition precedent to the expenditure of this item 12 appropriation, any of the said agencies requesting any portion of said appropriation shall submit a verified request therefor, which request shall be verified by the president of the requesting agency and supported by evidence itemized and detailed establishing, to the satisfaction of the governor, that the requesting agency is entitled to a portion of said funds. The request and supporting documentation must be submitted by March 15 of each fiscal year and shall be subject to the conditions herein set forth. The governor shall respond with his decision by April 15 of each fiscal year.

The above agencies shall, by July 1 of each fiscal year, submit for the current unrestricted subfund a detailed list of all FTE, faculty positions, each individual salary, and total budgeted benefits. The list shall equal total compensation at 100% excluding critical area faculty salary adjustment funds appropriated in this act for personal services. This total compensation figure may not from any individual agency be 3.6% greater than the operating budget for personal services for such agency. The list shall have at least these sections. Section 1 shall detail the positions which are eligible for the contingency vacancy savings appropriation. Any salary increases granted after this list is submitted will not be reimbursed from the vacancy savings fund. Section 2 shall detail all other staff. Section 3 shall detail by position the allocation of the critical area faculty salary adjustment funds.

In the event any such request is submitted and the governor shall find that the requesting agency has satisfied all the requirements and conditions herein set forth, the governor may issue his approval for expenditure of the said contingency-vacancy funds.

If the governor should determine, in his discretion, that any requesting agency has not satisfied the conditions of item 12 relating to a request for a portion of this appropriation, he may deny such request and such denial shall constitute final agency action.

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SECRETARY OF STATE

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
1. Records Management	580,152		573,661	
2. Administrative Code	86,072	80,000	91,801	81,000
3. Audit			6,000	
4. Voter information pamphlets			53,000	
5. Systems Development	111,500		88,500	
Total Secretary of State	777,724	80,000	812,962	81,000

A budget amendment increasing the administrative code's revolving fund spending authority in item 2 may be approved only for additional printing expenses and related supplies and postage.

The secretary of state is directed to contract with the information systems division (ISD) for systems development.

COMMISSIONER OF POLITICAL PRACTICES

1. General Operations	120,466		116,992	
2. Audit			3,000	
Total Commissioner of Political Practices	120,466		119,992	

STATE AUDITOR

1. State Auditor	1,547,545	125,000	1,561,152	150,000
2. Actuarial Fees: Insurance Division	10,000		10,000	
3. Audit	12,300		35,300	
Total State Auditor	1,569,845	125,000	1,606,452	150,000

In addition to the funds appropriated above, the local assistance distribution of funds provided for in 19-10-305(1), 19-11-512, 19-11-606, and 19-12-301 is appropriated.

Revenues generated under provisions of 50-3-109 shall be deposited to the general fund.

DEPARTMENT OF JUSTICE

1. General Operations	*6,985,288*	8,213,221	*6,469,784*	8,391,837
2. Case Travel:				

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Legal Services Division	12,000		13,000	
3. Contracted Services: Antitrust	16,500		16,500	
4. Severance Pay	4,900			
5. Hearings Officer		5,000		5,000
6. Audit	20,500	20,500		
7. Moving Costs		1,713	25,000	
8. Out-of-State Travel: Forensic Science	1,000		1,000	
9. County Attorney Payroll	602,395		602,395	
10. Transportation of Prisoners	*113,902*		129,115	
11. Radio Equipment	42,000		25,000	
12. a. SB 466		3,750		
b. HB 364	5,000		5,000	
c. HB 389		5,000		5,000
13. Highway Patrol Gasoline Allocation	*841,252*		*958,386*	
Total Department of Justice	*8,644,737*	8,249,184	8,245,180	8,401,837

Appropriated amounts within item 2 are for case-related travel only.

Any fund balance remaining within the motor vehicle account at the end of a fiscal year shall revert to the general fund.

Any collections made by the county prosecutor services program or antitrust enforcement efforts shall be deposited to the general fund.

Item 4 contains $4,900 for the biennium for severance pay, to be paid upon request from the county prosecutor program.

The rate charged by the agency legal services program may not exceed $30 per hour in 1982 and $35 per hour in 1983.

Collections made from hearings conducted by the motor vehicle division on dealer franchises shall be deposited to the general fund.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Of the remaining funds within the 1981 biennium appropriation for coal tax defense at June 30, 1981, $50,000 is reappropriated for the 1983 biennium for the same purpose. These funds are approved for coal tax defense legal-related costs only. Funds not reappropriated for coal tax defense during the 1983 biennium shall revert to the general fund upon passage of this bill.

Salaries as established for the forensic science division may not be altered or combined during the 1983 biennium to recreate the position of director of forensic services, which was specifically abolished by the legislature, or any other position which functions as a pathologist's assistant.

Amounts in item 12 are contingent upon passage of the noted bills.

The highway patrol may utilize funds within item 13 to purchase no more than 509,850 gallons of gasoline in fiscal 1982 and 491,480 gallons in fiscal 1983.

BOARD OF CRIME CONTROL

1. General Operations	218,250	391,250	217,900	404,400
2. *Matching Funds*	*11,577*			
3. Audit	1,150	12,850		
Total Board of Crime Control	*230,977*	*404,100*	217,900	*404,400*

Should federal funds become available for the uniform crime reporting program or the criminal justice data center, a like amount of general fund, less the matching requirement, shall be reverted. The maximum general fund reversion is $83,800 in 1982 and $86,500 in 1983, less matching requirements.

For the board of crime control, federal funds received for action grants may be administratively appropriated through the federal and private grant clearance fund.

Item 2 is a biennial appropriation. These funds are limited to matching requirements of action grants received prior to fiscal 1982 but not yet disbursed.

DEPARTMENT OF HIGHWAYS

1. General Operations Division	7,545,871	7,591,008
2. Low-Band Radio Equipment	74,000	74,000
3. Construction Division	118,303,305	118,876,162

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
4. Maintenance Division		36,011,400		37,854,616
5. Preconstruction Division		12,435,358		12,198,196
6. Service Revolving Division		2,426,004		2,537,543
7. Motor Pool Division		1,036,727		1,160,844
8. Equipment Division		11,369,034		12,113,491
9. Stores Inventory		13,341,876		14,518,052
10. Capital Outlay		570,072		571,153
11. Audit		20,625		61,875
Total Department of Highways		203,134,272		207,556,940

The department of highways is directed to:

(1) Develop and institute a comprehensive construction project planning system. This system will be operational no later than July 1, 1985, and will be the basis for:

(a) project scheduling;

(b) project monitoring;

(c) manpower planning;

(d) work measurement and evaluation;

(e) cash flow projections;

(f) long- and short-range construction goals; and

(g) budget preparation.

(2) Utilize the partial funding method for construction projects.

(3) Institute a cash forecasting system to minimize cash reserves.

(4) Maintain a surplus of completed construction plans in order to obligate and expend the maximum amount of federal dollars available for construction during the biennium.

(5) Submit to the 1983 legislature a construction work plan for the 1985 biennium that is detailed by year, project phase, and fund. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1985 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year, fund, and project phase.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

(6) Institute a maintenance management system for the maintenance division that incorporates equipment needs and usage. This system will be operational no later than July 1, 1985.

(7) Conduct a thorough assessment of equipment needs based on maintenance needs by geographic area.

(8) Submit to the 1983 legislature a maintenance work plan for all operational systems that ties directly to the maintenance division budget request for the 1985 biennium.

(9) Report quarterly to the legislative finance committee regarding the progress of the above-mentioned items.

Should additional federal money become available during the 1983 biennium for highway construction, highway earmarked funds shall be budget amended to the extent of matching requirements.

Earmarked revenue within the equipment division must be reduced dollar for dollar by revenue collected from the auction of equipment. This is contingent upon passage of SB 169.

The Helena headquarters van pool project administered by the department of highways may continue in operation and is to be operated on a self-supporting basis.

Funds may be transferred between line items 1, 3, 4, 5, 6, 7, and 8 to reflect actual personal service expense. No other transfers between line items may be made. This is not to be construed as permitting the transfer of full-time equivalent employees between programs, nor may there be an increase in the total number of appropriated full-time equivalent employees.

The conservation education program is funded.

The maintenance division is directed to establish a separate revolving account to reflect collections and expenditures related to damaged structures. One million dollars per year in highway earmarked funds will be replaced with revolving authority.

Funds within item 2 may be used to purchase low-band radio equipment only in emergency situations and also may be used to purchase high-band radio equipment in pilot project areas determined by the department of administration.

DEPARTMENT OF REVENUE

1. General Operations	12,340,311	1,325,313	12,490,050	1,359,671
2. Audit Costs	16,500	8,500	49,500	25,500
3. Legal Fees:				

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
Director's Office	25,000		25,000	
4. Recovery Services Division	197,718	593,153	199,603	598,807
5. SB 50	40,000		10,000	
Total Department of Revenue	12,619,529	1,926,966	12,774,153	1,983,978

Should the recovery services division return $1.05 in collections per $1.00 expended in 1982, the appropriation in item 4 may be increased a maximum of $16,000 from the general fund and $48,000 in federal funds for fiscal 1983.

Cash within the central supply revolving account at 1981 fiscal year end must be deposited to the general fund. Collections from liquidation of inventory during the 1983 biennium must also be deposited to the general fund.

In addition to those amounts appropriated above, there are appropriated to the liquor division funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor monopoly. The division shall deposit not less than $13 million of liquor profits to the general fund during the 1981 biennium. During the 1983 biennium, profits may not be less than 15% of net liquor sales and not less than $13 million. Net liquor sales are gross liquor sales less discounts and all taxes collected.

The operational expenses of the liquor merchandising system may not exceed 15% of net liquor sales. Operational expenses may not include product or freight costs. The liquor division has full authority to determine store operating hours and the number and location of stores and employees and may raise or lower the liquor pricing formula to achieve the deposit requirement.

Nonprofitable state stores should be closed or converted to agency stores in an orderly manner. A nonprofitable store is one that shows a net loss or is less profitable than if run at agency store status after reducing gross revenues by all state excise and license taxes and by deducting therefrom all normal operating expenses, which include a pro rata share, based on gross sales, of central administrative office expenses.

The county commissioners of the various counties and the governing bodies of local government units shall provide office space in county courthouses or government office buildings to the department of revenue of the state for its use at no cost to the state. The department is not liable for any expenses in connection with the use of such space, including but not limited to rent, utilities, or janitorial services. The department shall use such space as offices for its agents: the county assessor, appraiser, and their respective staffs.

Item 5 is contingent upon passage of SB 50.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
DEPARTMENT OF ADMINISTRATION				
1. General Operations	4,231,557	*13,795,950*	4,260,356	*13,992,768*
2. Communication Expense - Communications Division		2,938,440		2,862,239
3. Insurance Expenses - Insurance Division	175,000	1,769,195	192,500	1,898,888
4. Audit Fees	31,500	104,000	16,000	55,500
5. Equipment - Duplicating Services		152,799		61,500
6. Systems Development - Purchasing Division	120,000		55,500	
7. Systems Development - Teachers' Retirement System		140,000		
8. Emergency District Court Funding	375,000		375,000	
9. Disability Benefit Review - Public Employees' Retirement System		5,625		3,750
10. Unified Firefighters - Public Employees' Retirement System		25,770		25,270
11. General Services - Additional Buildings		200,845		205,500
12. Rent - Transferred Divisions	26,458	26,707	28,712	29,312
13. *Public Transportation Funds*		*75,000*		*75,000*
14. *Merit System Council*		*111,430*		*3,042*
15. *Workers' Compensation Judge*		*39,051*		
Total Department of Administration	4,959,515	*19,384,812*	4,928,068	*19,212,769*

The agency shall charge those divisions not supported by general fund for legal services provided by the attorney in the central office, and such income shall be deposited in the general fund.

An additional accountant is provided in the architecture and engineering division for the 1983 biennium only.

The architecture and engineering program is funded solely from the long-range building account. Any fund balance at the end of a fiscal year shall be reverted to the long-range building account. This program shall assess a 1% charge on the cost of construction funded from accounts other than the long-range building account at the time a contract is let and this revenue shall be deposited to the long-range building account.

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Fiscal Year 1982		Fiscal Year 1983	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The intent of the legislature is that all office space rentals in Helena be based on competitive bid.

The maximum length of a purchasing contract is extended to 5 years for the purchase of a new computer by the computer services division.

The state may continue to use its own printing facilities.

The graphic arts bureau of the publications and graphics division shall establish a separate revolving fund and shall become a self-supporting operation.

The office of budget and program planning shall assure reimbursement to the general fund for all management studies or systems support needs assessments provided by the consulting services bureau to nongeneral funded agencies if those agencies have sufficient funding available.

The board of investments shall operate under an earmarked fund.

As of July 1, 1981, interest generated on the $2.5 million loan to the self-insurance fund shall be deposited to the sinking fund that loaned the funds. Repayment of the loan shall occur at such time as the invested funds reach par.

All employees working under the direction of the workers' compensation judge shall be classified.

In the local government services division, general fund money is provided only for administrative support, which includes 6.7 full-time employees, and related support costs. Auditing services are expected to be self-supporting.

The budgeting, accounting, and reporting system (BARS), which is being implemented statewide into local governmental entities, is expected to be completed no later than June 30, 1984.

Item 9 provides for emergency funding of the district courts in those instances when a court incurs extraordinary expenses due to an extended criminal case or state government-related suits in Lewis and Clark County. These funds shall not be used for usual court operations or additional social service programs.

Emergency funds to Lewis and Clark County for state government-related suits will not exceed 10% above the revenue collected through the 6-mill levy.

No more than $9,000 may be spent during the biennium on a consumer health education program. All funds expended must be matched by a like amount from the health insurance carrier.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Item 10 is contingent upon passage of HB 372.

Item 11 is contingent upon passage of HB 674.

Item 12 is contingent upon the purchase of additional buildings, as referred to in HB 666, and the assumption of related maintenance duties by the department. The amount of funds spent shall be prorated based on the remaining portion of the fiscal year.

Item 13 contains the spending authority necessary to fund the lease agreement and other related costs for those divisions located in the building at 1424 Ninth Avenue. When this building is purchased by the state and maintenance responsibilities are assumed, all of the remaining funds in item 13, except for the prorated remaining portion of the annual charge of $3.02 per square foot in fiscal 1982 and $3.09 per square foot in fiscal 1983 that the department of administration shall charge for rent and repair expenses, shall revert.

The accountant added in item 11 is for this biennium only.

DEPARTMENT OF MILITARY AFFAIRS

1. Adjutant General	828,740	688,435	902,865	753,687
2. Disaster and Emergency Services	174,075	290,992	175,747	297,008
3. Audit	6,150	3,850		
4. Renovation of Emergency Operations Center		*75,000*		
Total Military Affairs	1,008,965	*1,058,277*	1,078,612	1,050,695

Item 4 is a biennial appropriation to the department of military affairs for the improvement of the emergency operations center.

All departments within section A may purchase low-band radio equipment on an emergency basis only. The department director shall certify on the purchase order the nature of the emergency.

TOTAL LEGISLATIVE, JUDICIAL, AND ADMINISTRATIVE

40,108,857	*236,249,231*	*38,669,282*	*240,496,043*

B. HUMAN SERVICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

1. Operations	*3,109,328*	*17,627,602*	*3,193,148*	*17,435,118*
2. Audit	2,873	8,377	8,616	25,134

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
3. Subdivisions Bureau		79,856		79,856
4. Medicaid Certification Matching Funds			*2,500*	
Total Department of Health and Environmental Sciences	*3,112,201*	*17,715,835*	*3,204,264*	*17,540,108*

In item 3 $39,928 each year is contingent upon legislative approval of the governor's amendment to HB 179.

No funds are appropriated for the hazardous waste program. However, the department may budget amend federal spending authority for the hazardous waste program if these federal funds become available and no additional general fund is required.

Funds within item 4 may be used as match only if federal funds become available for the medicaid certification grant in excess of $176,000.

The department may accept and administer the maternal and child health block grant and the preventive health block grant.

Budget amendments which meet the budget amendment criteria may be approved for those programs where transferred excess federal authority has been reduced.

The state will not administer the primary care block grant in fiscal 1983.

DEPARTMENT OF LABOR AND INDUSTRY

1. Labor Administration		430,137		423,601
2. Labor Standards	369,476	*69,332*	384,023	*31,480*
3. Personnel Appeals	318,604	8,000	321,036	8,000
4. Employment & Training		*948,808*		*964,821*
a. Migrant and Youth Training		*127,069*		*131,969*
5. Human Rights	122,355	75,657	128,502	72,509
6. Employment Security		*13,304,514*		*13,593,106*
7. Workers' Compensation	906,149	4,650,371	861,886	5,369,986
8. Audit		35,000	4,287	39,713
Total Department of Labor and Industry	1,716,584	*19,648,888*	1,699,734	*20,635,185*

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

In item 2, upon receipt of the federal veterans' administration contract general fund of $7,254 in fiscal 1982 and $2,762 in fiscal 1983 shall be reverted.

In item 5, general funds shall revert in the amount that other appropriated funds exceed the amounts shown for each fiscal year.

No funds may be used for a women's bureau.

The division of workers' compensation shall study performance factors that measure the division's operational effectiveness. The intent is to determine if the workers' compensation division budget should be based on performance measurements rather than expenditure limitations. This study shall be presented to the governor and the legislative finance committee by August 1, 1982.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

1. General Operations	*23,050,557*	*22,711,675*	*22,881,755*	*24,169,166*
2. Medicaid State Institutional Reimbursements	*3,277,327*		*3,612,174*	
3. Medicaid	*27,738,475*		*29,288,976*	
4. Department of Community Affairs — Community Services		*365,471*		*437,537*
5. Audit	23,000	123,000		
6. HB 258	53,865	100,035	53,865	100,035
7. *Community Services Block Grant*				*1,083,262*
Total Department of Social and Rehabilitation Services	*54,143,224*	*23,300,181*	*55,836,770*	*25,790,000*

Within other appropriated funds in item 1 is no more than $175,000 for the biennium for the operation of the developmental disabilities policy advisory council. Any federal money received above this amount may be spent only to improve direct client services as recommended by the council and approved by the SRS director.

The department is encouraged to utilize medicaid funds to support community services for the developmentally disabled where the use of such funds is cost-effective in providing services in the least restrictive environment. The department may use any savings generated from the budget for the developmentally disabled to develop additional community services.

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Fiscal Year 1982		Fiscal Year 1983	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The department of social and rehabilitation services shall assure that the community developmental disabilities group homes are reporting all financial transactions through a uniform accounting system including a single chart of accounts and accounting manual.

No money may be disbursed to the homes after July 1, 1982, unless the director of the department of social and rehabilitation services certifies to the legislative finance committee that the group homes are recording and reporting financial information uniformly.

The director shall reorganize the vocational rehabilitation and visual service programs to effect administrative economies and maintain direct benefits to clients within the appropriations herein provided. At least 15% of federal funds available for vocational rehabilitation shall be expended for the blind.

The governing body of any area agency on aging that contracts with SRS shall conduct its business in open meetings as required by Title 2, chapter 3, MCA.

The department shall monitor and assess the activities of the area agencies on aging for implementation of the department-approved area plans for aging services and shall report to the legislative finance committee, no later than 60 days prior to the beginning of the 48th legislative session, the extent to which the area agencies have complied with the area plans and the extent to which the area agencies have cooperated with the local government funding sources.

When federal funds for health underserved rural areas, Indian health services or certification surveys by the department of health and environmental sciences decrease or end, there is to be no state funding of these services during the biennium.

The department may use general fund money appropriated in item 3 together with matching federal funds to augment item 2. The department shall fully match the appropriation in item 2 at the maximum allowable federal rate with federal medicaid funds. *In item 2 and item 3 general fund appropriated for fiscal 1983 may be transferred to fiscal 1982 if there are further reductions in the federal medicaid funds. Expenditures from all funds for item 3 may not exceed $75,048,766 in fiscal 1982.*

By August 1, 1982, the department shall identify all optional services by specific type provided under the medicaid program. The identification must include the number of recipients, cost per optional service, and the impact of not funding each option.

If appropriated funds are not sufficient to provide medical care for all eligible persons, the department shall use the following priorities in keeping expenditures within appropriations:

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Fiscal Year 1982		Fiscal Year 1983	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

(1) limit the increases in reimbursement paid per service for medical care to no more than 10% for each fiscal year of the 1983 biennium to the maximum extent feasible; and

(2) limit eligibility and amount, scope, and duration of medical services provided.

The payment standard for families under the aid to families with dependent children program (AFDC) shall be an equal percentage of the poverty index according to family size. The payment standard for a family of two may not exceed $258 in fiscal 1982 and $280 in fiscal 1983.

Item *4* may be merged into the department of social and rehabilitation services' organizational structure or transferred to another state agency by approval of the governor's office. The legislative finance committee must be informed of any interagency transfers. The appropriation authority must be accounted for by a unique appropriation number in the statewide budgeting and accounting system.

The funding of item *6* is contingent upon passage and approval of HB 258.

The day-care rate per day for homes is not to exceed $6.00 in fiscal 1982 and $6.50 in fiscal 1983. The rate per day is not to exceed $7.00 in fiscal 1982 and $7.50 in fiscal 1983 for day-care centers.

All medicaid expenses shall be accrued in the appropriate fiscal year as required by the state modified accrual system of accounting. The legislative auditor shall audit the medicaid accrual by October 1 of each year to test for compliance with this requirement.

The legislature has determined that the requirements set forth in section 5, House Bill 94, Laws of 1981, restricting the use of appropriations to the department of social and rehabilitation services in regards to medicaid accruals are no longer necessary, therefore, except as expressly provided within this act, there are not restrictions relating to accrual procedures for any appropriation denominated "medicaid accrual" in any appropriations measure passed by the 47th legislature; thus the department may have cash outlays against medicaid accrual appropriations.

In the amount the social services block grant funds exceed $6,206,500 in fiscal 1982, SRS shall revert a like amount of general fund. If the social service block grant funds are less than $6,206,500 in fiscal 1982, SRS may transfer general fund from fiscal 1983 in item 1 to replace the amount of decreased social service block grant funds.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

For the 1983 biennium SRS shall transfer 10% of the amount received from the low income home energy assistance block grant not to exceed $1,668,724 to the social services block grant.

Because of the uncertainty in federal funding *in fiscal 1983*, the department should anticipate receiving the level of federal funding for AFDC, Medicaid, and Title XX calculated in the appropriations until funds at the federal level are allocated.

Item 7 is Montana's share of the Community Services Block Grant. The funds are to be distributed by SRS to the counties. A county may use such funds in any manner that is in conformance with the requirements set forth in Section 675, P.L. 97-35 (42 U.S.C. 9904). Fifty percent of the funds shall be distributed to counties based upon population (excluding Indian populations receiving such funds as provided in Section 674(c), P.L. 97-35 [42 U.S.C. 2808]). After public hearing, SRS shall develop a formula based upon county needs for distribution of the remaining 50% of such funds. SRS may consider such factors as numbers of public assistance recipients in each county, unemployment, per capita income, and age distribution in developing the needs formula.

TOTAL HUMAN SERVICES			
58,972,009	*60,664,904*	*60,740,768*	*63,965,293*

C. NATURAL RESOURCES AND BUSINESS REGULATION

DEPARTMENT OF AGRICULTURE			
1. Centralized Services			
106,606	*412,183*	*121,025*	*587,620*
2. Legislative Audit Fee			
10,102	4,898		
3. Rural Development Program			
	33,553		35,714
4. Hail Insurance Unit			
1,650	*930,744*	1,660	937,585
5. Crop and Livestock Unit			
47,500	13,900	56,069	13,900
6. Transportation Unit			
73,916	50,000	73,383	50,000
7. Wheat Research and Marketing			
	550,259		578,457
8. Environmental Management Division			
268,825	*605,369*	*388,196*	*440,346*
9. Plant Industry Division			
420,577	*496,886*	362,681	*506,043*
Total Department of Agriculture			
929,176	*3,097,792*	*1,003,014*	*3,149,665*

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
All indirect cost assessments received from Old West Regional Commission grants must be deposited in the general fund.				
DEPARTMENT OF COMMERCE				
1. Director's Office		121,432		126,249
2. Centralized Services		270,105		274,427
a. Legislative Audit				50,000
b. Moving Expenses		39,900		
3. Aeronautics Division		798,363		861,883
4. Administrative Support - Economic Development	27,399	86,808	19,194	104,558
5. Business Assistance Bureau	*99,622*	*184,193*	*134,461*	*127,273*
6. Board of Housing		470,496		490,281
7. Travel Promotion Program	600,000	100,000	700,000	200,000
8. Coal Board		9,314,904		11,306,975
9. Hard Rock Mining Board	*125,000*			
10. Rail Planning Program	60,119	*3,941,736*	39,056	*1,969,875*
11. Community Development Program	229,415	*718,979*	236,180	*693,551*
12. Indian Affairs Program	81,505		82,950	
13. Business Regulation and Licensing Administration	132,598	254,775	141,220	269,329
14. Weights and Measures Program	361,229		344,183	
15. Financial Program	537,070		554,076	
16. Milk Control Program		224,856		234,127
17. Consumer Protection Program	83,684		84,879	
18. Board of Architects		23,796		24,870
19. Board of Barbers		21,979		23,420

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
20. Board of Chiropractors		13,220		13,895
21. Board of Cosmetologists		97,550		101,536
22. Board of Dentistry		31,231		33,284
23. Electrical Board		59,623		62,942
24. Board of Hearing Aid Dispensers		5,238		5,524
25. Board of Horseracing		212,848		224,455
26. Board of Massage Therapists		5,321		5,633
27. Board of Medical Examiners		72,367		77,488
28. Board of Morticians		13,886		14,975
29. Board of Nursing		141,249		145,922
30. Board of Nursing Home Administrators		18,375		19,171
31. Board of Optometrists		12,245		13,006
32. Board of Osteopathic Physicians		801		869
33. Board of Pharmacists		83,173		86,659
34. Board of Plumbers		62,565		64,501
35. Board of Professional Engineers and Land Surveyors		98,548		103,682
36. Board of Public Accountants		121,861		114,538
37. Board of Realty Regulation		259,542		269,579
38. Board of Veterinarians		18,667		19,837
39. Board of Water Well Contractors		18,333		19,381
40. Board of Psychologists		11,301		12,677
41. Board of Sanitarians		4,646		5,004
42. Private Investigators Program		3,897		4,022

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
43. Board of Landscape Architects		6,791		7,304
44. Board of Speech Pathologists and Audiologists		7,342		7,881
45. Board of Radiologic Technologists		8,901		9,385
46. Board of Podiatry Examiners		1,098		1,161
47. Board of Physical Therapy Examiners		4,973		5,278
Total Department of Commerce	*2,337,641*	*17,967,914*	*2,336,199*	*18,206,407*

The director's office and centralized services shall be operated from a revolving account, with all earmarked and federal accounts assessed a pro rata share of the total expenses. The revolving account shall be initiated with a loan from one of the accounts under the department's supervision and operated on a full accrual basis and in accordance with generally accepted accounting principles.

The department is authorized to reorganize its current organizational structure only after receiving approval from the office of budget and program planning and review by the legislative finance committee.

Included in the weights and measures program appropriation for fiscal 1982 is $5,000 to be available for expenditure only if the cost of a new truck and trailer exceeds $30,000.

Coal impact grants may be granted to local government units only to remedy a situation resulting from coal development. The local government unit must be making a bona fide local effort to provide for its own needs through normal financing channels (taxes, service fees, or bonds).

Those divisions and bureaus of the department of commerce that are moved from private to state-owned office space shall revert the resulting savings in rent, utilities, taxes, and other expenses.

Item 9 is a biennial appropriation.

The department of commerce is authorized to administer the community development block grant.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS

1. Centralized Services Division		3,345,294		3,469,096
2. Legislative Audit		45,000		

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
3. Purchase of Cessna 180		54,210		
4. Ecological Services Division		744,740		759,203
5. Fisheries Division		*2,273,417*		*2,202,377*
6. Enforcement Division		2,924,202		2,935,004
7. Game Damage		65,000		65,000
8. Wildlife Division		3,018,696		3,107,075
9. Recreation and Parks Division	587,349	1,417,279	627,177	1,492,042
10. Conservation Education Division		968,677		989,140
11. Administration		463,167		467,167
Total Department of Fish, Wildlife, and Parks	587,349	*15,319,682*	627,177	*15,486,104*

None of the funds appropriated to the department may be used for the purchase or study of the purchase of any type of abandoned right-of-way.

Included in the centralized services appropriation is revolving account authority of $1,075,833 in fiscal 1982 and $1,183,417 in fiscal 1983. The revolving accounts must be operated on a full accrual basis and in accordance with generally accepted accounting principles.

An additional $500,000 a year is authorized in centralized services for the purpose of providing expenditure authority for federal and private funds that previously required budget amendments. Funds spent under this authorization must be accounted for separately from regular operations.

The Helena-based pilots shall be delegated enforcement responsibilities whenever they are not required for air transportation purposes.

The administration division appropriation includes:

(a) $80,000 a year for transfer to the department of livestock for predator control;

(b) $25,000 a year for the department to begin training to initiate the conservation officer concept within the department. A progress report on this effort must be made to the 1983 legislature.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

(c) $24,000 a year for uniforms or distinctive clothing for all field personnel outside of the enforcement division.

Items 1, 4, 5, 6, 8, 9, 10, and 11 contain a total of $456,298 in fiscal 1982 and $511,607 in fiscal 1983 to be spent only for gasoline.

DEPARTMENT OF STATE LANDS

1. Central Management Program	722,169	250,464	717,917	246,317
2. Legislative Audit	15,000			
3. Reclamation Program		7,368,739		7,894,841
4. Land Administration Program	176,000	60,259	175,000	47,991
5. Resource Development Program		574,934		468,043
Total Department of State Lands	913,169	8,254,396	892,917	8,657,192

The other funds appropriations for the central management program provide for salary and expenses of the Northern Powder River Environmental Impact Statement Team. The eight FTE approved for the team may continue only as long as federal funds are available to provide support.

DEPARTMENT OF LIVESTOCK

1. Centralized Services	73,320	*249,962*	75,820	*257,460*
2. Legislative Audit	3,250	9,750		
3. Diagnostic Laboratory Program	294,894	306,839	304,754	316,700
4. Disease Control Program		636,605		635,757
5. Milk and Egg Program	176,096	11,500	183,023	12,000
6. Inspection and Control Program		1,576,968		1,611,730
7. Predator Control Program		278,863		295,881
8. Rabies and Rodent Control Program	70,489	15,000	71,018	15,000
Total Department of Livestock	618,049	*3,085,487*	634,615	*3,144,528*

DEPARTMENT OF NATURAL RESOURCES

1. Centralized Services Division	1,059,202	*636,138*	1,051,051	*468,663*

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
2. Legislative Audit	18,400	21,600		
3. Oil and Gas Regulation Division		689,798		693,932
4. Conservation District Supervision Division		441,953		477,377
5. Water Resources Division	1,632,061	*2,347,098*	1,782,524	*2,114,307*
6. Forestry Division	3,149,988	2,767,281	2,943,379	2,817,674
7. Energy Division	329,975	3,242,757	350,105	3,502,341
8. Facility Siting Division	208,705	1,500,000	213,189	1,000,000
Total Department of Natural Resources	6,398,331	*11,646,625*	6,340,248	*11,074,294*

Included in the facility siting division appropriation of other funds for fiscal 1982 is $500,000 resource indemnity trust fund interest to continue the appropriation of HB 908 of the 1979 legislature. The appropriation allows continuation of studies for the possible construction of a MHD engineering test facility in Montana. Expenditure of these funds is limited to the original appropriation.

The forestry division general fund appropriation for fiscal 1982 includes a $180,000 biennial appropriation to acquire and upgrade firefighting vehicles and equipment for distribution to nine county cooperative fire districts. The districts shall operate and maintain the equipment.

Included in the general fund appropriation in item 5 for fiscal year 1983 is $186,000 for either a grant to an irrigation district formed to operate the Daly ditch water project for the purpose of operating and maintaining the project for 1 year or, if an irrigation district is not formed, for use by the department in administering the abandonment of the project, including the removal of structures.

Included in the oil and gas regulation division appropriation each year is $65,000 of resource indemnity trust fund interest for the purpose of repairing and plugging abandoned oil and gas wells.

All federal Clark-McNary (CM-2) funds received by the department in excess of $250,000 per year will be deposited in the general fund.

Any federal funds received for the HIPLEX project may be added through the budget amendment process.

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PUBLIC SERVICE COMMISSION

	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
1. General Operations	1,184,442	19,310	1,195,975	19,310
2. Legislative Audit	7,000			
3. Special Audit	50,000			
Total Public Service Commission	1,241,442	19,310	1,195,975	19,310

The appropriation in item 3 will continue the audit and any litigation related to commission docket no. 80.8.55. The appropriation may be spent only for determining the original cost of Montana Power Company's hydroelectric properties or litigation related thereto.

TOTAL NATURAL RESOURCES AND BUSINESS REGULATION

13,025,157	*59,391,206*	*13,030,145*	*59,737,500*

D. DEPARTMENT OF INSTITUTIONS

CENTRAL OFFICE

1. Director's Office	237,041	28,994	235,510	32,616
2. Alcohol & Drug Abuse Division	194,239	*1,481,319*	203,871	*1,551,787*
3. Corrections Division	*3,292,217*		*3,346,989*	
4. Management Services Division	*732,502*	*129,422*	*791,981*	*73,037*
5. Mental Health Division	3,957,049	*464,315*	4,352,354	*369,234*
6. Audit			16,145	8,855
7. Building Space	76,713	21,754	77,318	21,926
8. Women's Correctional Facility				
a. General Operations	*143,897*		*400,049*	
b. Contingency	*15,120*		*92,030*	
c. Construction	*93,564*			
Total Central Office	*8,742,342*	*2,125,804*	*9,516,247*	*2,057,455*

The Montana drug program shall be funded at 32 percent general fund and 68 percent federal funds.

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Fiscal Year 1982		Fiscal Year 1983	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

General fund distribution by the mental health division to community mental health programs may not exceed $3,756,453 in fiscal 1982 and $4,147,272 in fiscal 1983. These amounts include pay raises. Sixty thousand dollars of funds appropriated for community mental health programs may be used to support programs provided by the current friends to youth program for emotionally disturbed children.

No general fund money may be used to support the manpower or community support programs.

Funds authorized in item 8 may not be used to establish a women's unit at Mountain View School.

Item 7 contains spending authority necessary to fund the lease agreement and other related costs for the central offices of the department of institutions. When this building is purchased by the state, all appropriated funds in item 7 except $3.02 per square foot in fiscal 1982 and $3.09 per square foot in fiscal 1983 in proportion to the time period remaining each fiscal year shall revert.

Item 8c and the amount appropriated in HB 666 for Spruce cottage is for the purpose of *remodeling and renovation of the women's correctional facility.*

It is the intent of the legislature that the department of institutions apply for the full amount of federal funds available through the Omnibus Reconciliation Act of 1981 for mental health programs during federal fiscal years 1982 and 1983. Any funds received by the department of institutions may be budget amended under the provisions of House Bill 500, section 3, to maintain current level community mental health programs. It is also the intent of the legislature that expenditures for community mental health programs not exceed available revenues. The department of institutions may not spend more than 75% of the federal fiscal 1983 mental health block grant funds in state fiscal year 1983. The department must carry forward 25% of the federal fiscal 1983 block grant into state fiscal year 1984.

Excess alcohol and drug abuse block grant funds not appropriated by the special session of the legislature cannot be budget amended into current level alcohol or drug abuse programs. Any excess funds shall be available for appropriation by the 48th legislature.

If the women's correctional facility is not operational by April 1, 1982, any excess funds authorized in item "8a" for fiscal 1982 may be used to fund costs associated with keeping women offenders out-of-state beyond April 1, 1982.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The appropriations contained in item "8b" for fiscal 1983 contain $46,948 for an in-state contingency fund which may be used only if the women's correctional facility exceeds 20 women inmates in fiscal 1983, the Billings' life skills center is at 80% capacity and the specific nature and need for additional funding has been approved by the office of budget and program planning. Also contained in item b for fiscal 1983 is $45,082 for an out-of-state contingency fund which may be used if all budgeted out-of-state slots are filled, the state of Montana does not have adequate security facilities to house the inmate, and the specific reasons for the inmate to be transferred out-of-state has been approved by the office of budget and program planning.

BOULDER RIVER SCHOOL AND HOSPITAL

1. General Operations	9,308,901	*90,724*	9,364,280	*59,059*
2. Audit	15,000			
Total Boulder River School and Hospital	9,323,901	*90,724*	9,364,280	*59,059*

CENTER FOR THE AGED

1. General Operations	1,939,921	9,458	1,965,887	9,729
2. Audit			7,000	
Total Center for the Aged	1,939,921	9,458	1,972,887	9,729

The amounts of $18,964 in fiscal 1982 and $21,771 in fiscal 1983 of the general fund appropriations must be used for a fire alarm system maintenance contract or be reverted to the general fund.

EASTMONT TRAINING CENTER

1. General Operations	1,530,951	*36,502*	1,542,725	*38,923*
2. Audit			6,500	
Total Eastmont Training Center	1,530,951	*36,502*	1,549,225	*38,923*

GALEN STATE HOSPITAL

1. General Operations	4,405,192	1,306,988	4,366,991	1,366,719
2. Audit	12,000			
Total Galen State Hospital	4,417,192	1,306,988	4,366,991	1,366,719

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
WARM SPRINGS STATE HOSPITAL				
1. General Operations	11,182,794	*166,431*	11,374,319	*169,659*
2. Audit			16,000	
Total Warm Springs State Hospital	11,182,794	*166,431*	11,390,319	*169,659*

Funds may be transferred between Warm Springs state hospital and Galen state hospital by the budget amendment process. If applicable and warranted, further consolidation may take place between the two facilities.

MOUNTAIN VIEW SCHOOL				
1. General Operations	1,310,400	*73,612*	1,316,744	*60,702*
2. Audit			8,000	
Total Mountain View School	1,310,400	*73,612*	1,324,744	*60,702*
PINE HILLS SCHOOL				
1. General Operations	1,986,558	*479,940*	1,972,777	*460,466*
2. Audit			11,000	
Total Pine Hills School	1,986,558	*479,940*	1,983,777	*460,466*
MONTANA STATE PRISON				
1. General Operations	*6,864,680*	73,041	*7,035,842*	73,980
2. Ranch		1,384,106		1,398,723
3. Industries	143,500	193,342	78,000	295,671
4. Canteen		250,469		250,521
5. License Plate Factory		491,242		529,593
6. Audit			11,967	3,033
Total Montana State Prison	*7,008,180*	2,392,200	*7,125,809*	2,551,521

Item 1 includes $10,200 for FY 1982 and $20,500 for FY 1983 for prisoner "gate money". If it is determined that the released person should receive $100 "gate money", the prison is to buy a ticket to the person's destination first and then disburse any remaining funds to the released person.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
SWAN RIVER YOUTH FOREST CAMP				
1. General Operations	*637,902*	*96,981*	642,792	96,080
2. Audit			6,000	
Total Swan River Youth Forest Camp	*637,902*	*96,981*	648,792	96,080
VETERANS' HOME				
1. General Operations	486,575	714,000	470,033	727,500
2. Audit			6,000	
Total Veterans' Home	486,575	714,000	476,033	727,500
BOARD OF PARDONS				
1. General Operations	100,242		102,106	
2. Audit	2,000			
Total Board of Pardons	102,242		102,106	

Personal services expenditures may not exceed the following level plus pay plan appropriations or budget amendments from unanticipated funds for each institution or program listed.

	Fiscal 1982	Fiscal 1983
Director's Office	226,892	226,892
Alcohol and Drug Abuse Division	530,438	530,438
Corrections Division	1,653,652	1,653,996
Management Services Division	697,809	686,221
Mental Health and Residential Services	344,378	344,378
Boulder River School and Hospital	7,666,835	7,666,835
Center for the Aged	1,491,662	1,491,662
Eastmont Training Center	1,311,589	1,311,589
Galen State Hospital	4,694,991	4,694,991
Mountain View School	1,155,261	1,155,498
Pine Hills School	2,019,866	1,975,381
Montana State Prison	5,062,818	5,076,689
Swan River Youth Forest Camp	479,892	479,989
Veterans' Home	882,356	882,538
Warm Springs State Hospital	9,266,217	9,266,217
Board of Pardons	80,004	80,004

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

If utilities expenditures exceed the amounts listed below, the institution may ask for a supplemental appropriation. If utilities do not exceed the anticipated amounts, the difference will be reverted to the general fund.

Boulder River School and Hospital			484,045	542,130
Center for the Aged			85,125	95,340
Eastmont Training Center			47,989	53,748
Galen State Hospital			326,794	366,010
Mountain View School			47,911	53,660
Pine Hills School			114,992	126,422
Montana State Prison			239,486	267,766
Swan River Youth Forest Camp			45,253	50,683
Veterans' Home			91,286	102,241
Warm Springs State Hospital			724,971	811,968
Corrections Division			22,401	25,090
TOTAL DEPARTMENT OF INSTITUTIONS				
	48,668,958	*7,492,640*	*49,821,210*	*7,597,813*

E. OTHER EDUCATION

BOARD OF PUBLIC EDUCATION

1. Administration	79,104	79,020
2. Fire Services Training School	178,478	173,406
Total Board of Education	257,582	252,426

The board of public education shall be provided office space free of charge in the building leased by the state and paid from the appropriation to the commissioner of higher education. The fire service training school shall be provided office, storage, and classroom space, inclusive of weekend janitorial service, in the Great Falls vocational-technical center at no charge.

PUBLIC SCHOOL SUPPORT

1. Special Education	23,254,921	25,347,864
2. Special Education Emergency Contingency	500,000	500,000
3. Audiological Services	688,614	750,589
Total Public School Support	24,443,535	26,598,453

Item 1 is for foundation and permissive support of the maximum-budget-without-a-vote for special education.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Item 2 is for emergencies that may arise in special education programs at local districts. A district's board of trustees may apply for an allocation from these funds by presenting to the superintendent of public instruction a child-study team report and an individual educational plan for each child relating to this unforeseen expense and a current listing of programs, case loads, and related costs. The appropriation in item 2 is for the biennium and the specific amounts may be transferred between fiscal years.

Item 3 is for purchase of audiological services by the office of public instruction. These amounts may not be transferred between fiscal years. Any unused amounts revert at the end of the fiscal year.

Notwithstanding other provisions of law, the superintendent may not approve a maximum-budget-without-a-vote for special education which, in the aggregate, exceeds $51,041,988 in the 1983 biennium.

Federal funds to support special education programs in excess of $5,110,000 during the 1983 biennium shall be placed in a reserve fund and not spent until appropriated by the 1983 legislature.

SUPERINTENDENT OF PUBLIC INSTRUCTION, VOCATIONAL-TECHNICAL CENTERS

1. Billings Center				
a. Personal Services	434,969	490,694	487,031	521,942
b. Operating Expenses	133,475	166,368	194,230	208,152
c. Equipment	6,288	7,196	6,454	7,030
d. Audit Costs	14,000			
2. Butte Center				
a. Personal Services	588,475	304,643	663,762	327,519
b. Operating Expenses	76,437	46,300	119,901	59,162
c. Equipment	14,637	7,513	14,833	7,317
d. Audit Costs	13,000			
3. Great Falls Center				
a. Personal Services	539,848	360,799	602,669	379,037

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
b. Operating Expenses	128,719	86,028	176,418	119,759
c. Equipment	23,449	15,751	31,182	18,718
d. Audit Costs			14,000	
4. Helena Center				
a. Personal Services	898,055	429,643	990,168	457,023
b. Operating Expenses	254,922	121,958	347,259	167,205
c. Equipment	38,958	18,642	44,438	20,412
d. Audit Costs			15,000	
5. Missoula Center				
a. Personal Services	917,631	526,547	997,856	576,298
b. Operating Expenses	217,738	133,548	283,644	163,814
c. Equipment	56,276	32,194	32,102	18,613
d. Audit Costs	15,000			
6. Office of Budget and Program Planning CETA Contingency Funds	44,000			
7. *Office of Public Instruction*			*229,508*	
Total Vocational-Technical Centers	4,415,877	2,747,824	*5,250,455*	3,052,001

The superintendent of public instruction may transfer funds between personal services, operations, and equipment within each vocational-education center or between vocational-education centers. The intent of the legislature is that these appropriated funds not provide for salary increases at the vocational-education centers above the state pay plan for fiscal years 1982 and 1983.

Receipt of state funds appropriated to the five technical centers is contingent upon each county in which the center resides levying 1.5 mills each fiscal year. Millage received by the centers from the 1.5 mill levy over $765,101 in fiscal 1982 and $804,733 in fiscal 1983 will revert a like amount to the general fund each year.

Item 6 is to be distributed to the Billings center if CETA funds are not available to the center in fiscal 1982.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Item 7 is to replace anticipated reductions in federal funds appropriated to the vocational-technical centers. If, in state fiscal 1983, federal funds available for use at the centers is less than $1,078,492, each dollar reduction below this level shall be replaced from this contingency fund. No center is eligible to receive contingency funds unless resident tuition for a full-time student is $150 per quarter in fiscal 1983.

If the total federal vocational-education funds granted to Montana for fiscal 1983 exceed $2,086,590, the office of public instruction shall, to the maximum extent allowable by federal law, make the additional funds available, (not to exceed $1,308,000), to the vocational-technical centers. The additional funds shall first be used to reduce contingency amounts in item 7 and secondarily used to reduce tuition.

OFFICE OF PUBLIC INSTRUCTION

1. Office of Public Instruction	1,566,750	3,209,704	*2,009,984*	*2,367,602*
2. Audit Costs			50,000	
3. School Transportation	4,724,445		5,019,250	
4. School Lunch	731,494		807,449	
5. Adult Education	121,881		132,851	
6. Secondary Vocational Education	1,500,000			
7. Building Space	116,897	10,740	130,662	7,911
Total Office of Public Instruction	8,761,467	3,220,444	*8,150,196*	*2,375,513*

Other appropriated funds in item 1 contain $369,182 in fiscal 1982 and *$302,327* in fiscal 1983 for internal transfers of indirect costs. General fund money shall revert in the amount indirect costs in excess of these amounts are recovered.

The office of public instruction shall revert general fund to the extent that the education block grant allocation for state administration plus available carry-over funds exceed $325,600 in fiscal 1983.

Item 6 is for the biennium.

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Fiscal Year 1982		Fiscal Year 1983	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Item 7 contains the spending authority necessary to fund the lease agreement and other related costs of the office of public instruction building at 1300 Eleventh Avenue. When this building is purchased by the state, all appropriated funds in item 7 except $3.02 per square foot in fiscal 1982 and $3.09 per square foot in fiscal 1983 in proportion to the time period remaining each fiscal year shall revert.

All revenues received in the state traffic education account under provisions of 20-7-504 are appropriated to be distributed as provided in 20-7-506.

ADVISORY COUNCIL FOR VOCATIONAL EDUCATION

1. General Operations			
	92,000		94,000
2. Audit			
	2,000		
Total Advisory Council for Vocational Education			
	94,000		94,000

STATE LIBRARY

1. General Operations			
332,472	759,794	417,771	809,245
2. Administration Program - Moving Costs			
20,000			
3. Library Networking Operations			
	77,300		73,549
4. Audit			
3,300	2,700		
Total State Library			
355,772	839,794	417,771	882,794

Item 2 is for the biennium ending June 30, 1983.

Item 3 consists of earmarked funds generated under 15-35-108(2)(i). These funds are appropriated for networking operations at the state library. All other funds generated pursuant to this section shall be distributed to the library federations.

MONTANA HISTORICAL SOCIETY

1. Administration, Library, Archives, and Museum Programs			
613,113	100,800	619,701	100,800
2. Historic Sites Program			
56,422	56,423	57,630	57,630
3. Publications Program			
35,162	123,944	36,827	129,812
4. Merchandising Program			
	284,337		287,515

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
5. Audit	2,899	2,101	8,728	6,272
Total Montana Historical Society	707,596	567,605	722,886	582,029

Item 4 contains $20,000 in fiscal year 1982 and $20,000 in fiscal year 1983 for internal transfers of profits generated by the merchandising program.

MONTANA ARTS COUNCIL				
1. General Operations	76,222	222,270	81,719	230,628
2. Local Community Grants	20,275		20,275	
3. Audit	3,500	3,500		
Total Montana Arts Council	99,997	225,770	101,994	230,628
SCHOOL FOR THE DEAF AND BLIND				
1. General Operations	*1,391,483*	*564,439*	*1,482,165*	*522,929*
2. Audit	15,000			
Total School for the Deaf and Blind	*1,406,483*	*564,439*	*1,482,165*	*522,929*

Expenditures of interest and income revenue may not exceed $223,931 in fiscal 1982 and $226,035 in fiscal 1983.

TOTAL OTHER EDUCATION	*40,448,309*	*8,259,876*	*42,976,346*	*7,739,894*

F. HIGHER EDUCATION

For units of the university system other than the office of the commissioner of higher education, the appropriations made under the column heading "Other Appropriated Funds" are from funds within current unrestricted funds unless otherwise indicated.

All funds, other than plant funds and those specifically appropriated herein, may be spent and are appropriated contingent upon approval by the board of regents by July 1 of each year of a comprehensive program budget containing a detail of revenues and expenditures and anticipated fund balances of current funds, loan funds, and endowment funds. All movement of funds between the current unrestricted subfund and the designated subfund accounting entities shall be clearly identified in the state budgeting and accounting system.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

Programs for the university budgets include instruction, organized research, public service, academic support, student services, institutional support, and operation and maintenance of plant.

Included within other appropriated funds to the six institutions is the sum of $12,488,450 in fiscal year 1982 and $13,579,452 in fiscal year 1983 from revenues generated under the provisions of House Bill 191, 46th legislature.

The amounts shown for critical area faculty salary adjustments are appropriated to the colleges and universities contingent upon approval by the board of regents of a salary distribution plan or negotiated agreement for each campus. It is the legislature's intent that the critical area faculty salary adjustment funds be expended in those academic disciplines where difficulty is experienced recruiting or retaining faculty due to external market conditions.

BOARD OF REGENTS				
	23,029		25,104	
COMMISSIONER OF HIGHER EDUCATION				
1. Office Administration	624,554	*24,310*	633,221	
2. WAMI	1,491,997		1,625,272	
3. WICHE - Student Assistance	627,100	911,000	500,800	1,143,000
4. WICHE - Administrative Dues	46,300		50,000	
5. University of Minnesota - Rural Dentistry	153,600		168,000	
6. SSIG	175,000	211,592	175,000	211,592
7. NDSL	100,000		100,000	
8. Audit	6,000			
Total Commissioner of Higher Education	3,224,551	*1,146,902*	3,252,293	*1,354,592*
COMMUNITY COLLEGES				
1. Miles Community College	779,222		819,247	
2. Dawson Community College	587,208		639,498	
3. Flathead Valley Community College	1,127,029		1,185,178	
Total Community Colleges	2,493,459		2,643,923	

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds

The above appropriation provides 53 percent of the total unrestricted budgets for the community colleges that shall be approved by the board of regents.

The general fund appropriation for each community college includes 53 percent of the total audit cost. The remaining audit costs shall be paid from local funds. Audit costs are not to exceed $17,000 for each unit for the biennium.

BUREAU OF MINES			
1,210,783	141,600	1,228,570	155,800
AGRICULTURAL EXPERIMENT STATION			
1. Agricultural Experiment Station			
4,448,576	2,275,276	4,570,687	2,359,167
2. United States Range Station			
_____	901,926	_____	927,288
Total Agricultural Experiment Station			
4,448,576	3,177,202	4,570,687	3,286,455
COOPERATIVE EXTENSION SERVICE			
1,644,433	1,631,270	1,607,040	1,755,623
FORESTRY AND CONSERVATION EXPERIMENT STATION			
500,773		594,407	
MONTANA STATE UNIVERSITY			
1. Instruction			
10,754,709	7,587,801	10,587,516	7,793,104
2. Critical Area Faculty Salary Adjustment			
186,191	128,809	198,595	143,405
3. Organized Research			
412,098	285,092	419,429	302,870
4. Public Service			
5,159	3,569	5,017	3,623
5. Academic Support, Student Services, and Institutional Support			
5,580,112	3,860,358	6,003,155	4,334,873
6. Operation and Maintenance of Plant			
2,174,812	1,504,549	2,285,575	1,650,411
7. Scholarships and Fellowships			
392,782	271,729	431,975	311,929
8. Audit Costs			
18,840	13,035	6,170	4,455
Total Montana State University			
19,524,703	13,654,942	19,937,432	14,544,670

Total audit costs are estimated to be $85,000 for the biennium. Fifty percent of those costs are to be paid from funds other than those appropriated by the legislature.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
UNIVERSITY OF MONTANA				
1. Instruction	8,773,903	5,460,204	8,732,602	5,692,301
2. Critical Area Faculty Salary Adjustment	152,343	92,657	162,479	103,521
3. Organized Research	220,080	133,856	222,794	141,951
4. Public Service	100,589	61,180	102,605	65,373
5. Academic Support, Student Services, and Institutional Support	4,899,936	2,980,227	5,180,245	3,300,525
6. Operation and Maintenance of Plant	2,370,108	1,441,542	2,507,881	1,597,864
7. Scholarships and Fellowships	394,307	239,825	416,972	265,669
8. Audit Costs	19,820	12,055	6,490	4,135
Total University of Montana	16,931,086	10,421,546	17,332,068	11,171,339

Total audit costs are estimated to be $85,000 for the biennium. Fifty percent of those costs are to be paid from funds other than those appropriated by the legislature.

EASTERN MONTANA COLLEGE				
1. Instruction	2,876,473	1,585,378	2,754,541	1,727,227
2. Critical Area Faculty Salary Adjustments	43,158	22,842	44,940	27,060
3. Public Service	22,797	12,065	22,155	13,340
4. Academic Support, Student Services, and Institutional Support	2,201,727	1,165,294	1,984,834	1,195,140
5. Operation and Maintenance of Plant	1,039,378	550,105	1,049,692	632,058
6. Scholarships and Fellowships	130,359	68,994	125,640	75,652
7. Audit Costs	7,283	3,855	14,114	8,498
Total Eastern Montana College	6,321,175	3,408,533	5,995,916	3,678,975

Total audit costs are estimated to be $45,000 for the biennium. Twenty-five percent of those costs are to be paid from funds other than those appropriated by the legislature.

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
NORTHERN MONTANA COLLEGE				
1. Instruction	1,784,498	757,333	1,767,099	816,710
2. Critical Area Faculty Salary Adjustment	11,359	4,641	12,107	5,393
3. Public Service	6,376	2,605	6,388	2,845
4. Academic Support, Student Services, and Institutional Support	877,010	358,345	943,010	420,070
5. Operation and Maintenance of Plant	440,490	179,984	451,192	200,986
6. Scholarships and Fellowships	86,263	35,247	82,950	36,950
7. Audit Costs	13,977	5,711	4,539	2,023
Total Northern Montana College	3,219,973	1,343,866	3,267,285	1,484,977

Total audit costs are estimated to be $35,000 for the biennium. Twenty-five percent of those costs are to be paid from funds other than those appropriated by the legislature.

WESTERN MONTANA COLLEGE				
1. Instruction	730,977	369,544	720,410	388,313
2. Critical Area Faculty Salary Adjustment	5,413	2,587	5,960	3,040
3. Academic Support, Student Services, and Institutional Support	645,051	308,224	676,244	344,918
4. Operation and Maintenance of Plant	343,219	164,000	354,136	180,628
5. Scholarships and Fellowships	32,118	15,347	33,035	16,850
6. Audit Costs	4,440	2,122	13,038	6,650
Total Western Montana College	1,761,218	861,824	1,802,823	940,399

Total audit costs are estimated to be $35,000 for the biennium. Twenty-five percent of those costs are to be paid from funds other than those appropriated by the legislature.

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY				
1. Instruction	1,648,006	1,096,383	1,695,835	1,127,568

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	Fiscal Year 1982		Fiscal Year 1983	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
2. Critical Area Faculty Salary Adjustment	104,903	69,212	112,992	74,514
3. Organized Research	23,912	15,776	26,265	17,321
4. Academic Support, Student Services, and Institutional Support	906,491	598,075	1,156,466	762,650
5. Operation and Maintenance of Plant	631,925	416,925	673,885	444,405
6. Scholarships and Fellowships	100,090	66,037	104,423	68,863
7. Audit Costs	10,168	6,707	10,169	6,706
Total Montana College of Mineral Science and Technology	3,425,495	2,269,115	3,780,035	2,502,027

Total audit costs are estimated to be $45,000 for the biennium. Twenty-five percent of those costs are to be paid from funds other than those appropriated by the legislature.

Funds appropriated to the colleges and universities in all items except audit costs and critical area faculty salary adjustments may be transferred between items within a fiscal year through budget amendment approved by the board of regents.

TOTAL HIGHER EDUCATION	64,729,254	*38,056,800*	66,037,583	*40,874,857*
GRAND TOTAL	*265,952,544*	*410,114,657*	*271,275,334*	*420,411,400*

Section 20. **Effective date.** This act is effective July 1, 1981."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved December 4, 1981, except for the items vetoed and set forth in the veto message filed this date with the Secretary of State. (The vetoed items were removed from the bill prior to publication herein.)

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MCA, 1981

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SESSION LAWS

ENACTED BY THE

Forty-seventh Legislature

IN SECOND

SPECIAL SESSION

June 21, 1982 through June 26, 1982

STATE OF MONTANA

EXPLANATORY NOTE:

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.

CITATION:

These Session Laws may be cited as in the following example: "Sec. 2, Ch. 6, Sp.L. 1982."

2007

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HOUSE AND SENATE BILLS

Chap. Num.	Senate Bill	House Bill	Title
1	5		An act to authorize the warden of the Montana State Prison to grant a temporary furlough to a prisoner who has been approved for parole on conditions that are difficult to fulfill while incarcerated; amending section 46-23-215, MCA; and providing an immediate effective date. ..... Page 1
2		11	An act creating a factfinding task force to prepare recommendations and a plan of action to deal with Montana's correctional problems for the consideration of the 48th Legislature; providing for staffing and use of consultants by the task force; appropriating funds for the task force; and providing an immediate effective date and a termination date. ..... Page 1
3	1		An act to establish an industries training program at the Montana State Prison that provides vocational on-the-job training and work experience for prison inmates; limiting the program to providing services and producing personal property for state agencies, local governments, school districts, and other governmental entities; appropriating funding for the establishment of the program; and providing an immediate effective date. ..... Page 4
4		10	An act to specifically authorize the Department of Institutions to maintain existing community based prerelease centers and to contract with private nonprofit Montana corporations to establish and maintain community based prerelease centers; amending section 53-1-203, MCA; and providing an immediate effective date. ..... Page 6
5		13	An act directing the Legislative Council to contract, within existing appropriations, with an independent consultant to prepare an estimate of the costs of renovating the old Montana State Prison; requiring the Council to submit the report to the 48th Legislature; and providing an immediate effective date. ..... Page 7
6		16	An act authorizing the Department of Institutions to house minimum security agriculturally employed prisoners outside the confines of the prison fence; establishing an exemption to allow for timely construction and a sole source purchase; providing punishment for escape from such confinement; appropriating funds for establishing housing for such inmates; and providing an effective date. ..... Page 8
7		17	An act providing for the use of inmate labor in the maintenance and repair of the state prison; providing that such inmates are not employees for purposes of employee rights; preventing future public employee collective bargaining agreements from prohibiting such use of inmate labor; and providing an immediate effective date. ..... Page 9

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HB	1	An act appropriating money for the operation of the Special Session of the Forty-Seventh Legislature convening on June 21, 1982; and providing an immediate effective date. ..... Page 11
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HB 18 An act to amend House Bill No. 500, Laws of 1981, as amended by House Bill No. 2, Laws of 1981, First Special Session, for fiscal year 1983 to increase the appropriation to the Department of Institutions for the purpose of adding remedial teaching staff to the academic program at Montana State Prison; and providing an effective date..... Page 16

HOUSE JOINT RESOLUTION

HJR 3 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Department of Institutions with the Department of Administration to carefully review the employment classifications, positions, and grades of corrections personnel at the Montana State Prison to establish equity among positions, to enhance career opportunities, and to further the recruitment and retention of superior personnel Page 19

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	5	Appropriation
	6	Effective date -- termination
3	1	53-30-131 thru 53-30-133
	2	Appropriation
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4	1	53-1-203
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5	1	Capital repairs to old prison -- cost estimate
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6	1	53-30-141(1), (2)
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7	1	53-30-151
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	5	Codification
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SESSION LAWS

CHAPTER NO. 1

AN ACT TO AUTHORIZE THE WARDEN OF THE MONTANA STATE PRISON TO GRANT A TEMPORARY FURLOUGH TO A PRISONER WHO HAS BEEN APPROVED FOR PAROLE ON CONDITIONS THAT ARE DIFFICULT TO FULFILL WHILE INCARCERATED; AMENDING SECTION 46-23-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-215, MCA, is amended to read:

"**46-23-215. Conditions of parole.** (1) Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board.

(2) When an order for parole is issued, it shall recite the conditions thereof.

(3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that he obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant him a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on such furlough, the prisoner remains in the legal custody of the prison and is subject to all other conditions recited by the board."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved June 29, 1982.

CHAPTER NO. 2

AN ACT CREATING A FACTFINDING TASK FORCE TO PREPARE RECOMMENDATIONS AND A PLAN OF ACTION TO DEAL WITH MONTANA'S CORRECTIONAL PROBLEMS FOR THE CONSIDERATION OF THE 48TH LEGISLATURE; PROVIDING FOR STAFFING AND USE OF CONSULTANTS BY THE TASK FORCE; APPROPRIATING FUNDS FOR THE TASK FORCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Governor has convened the Legislature to consider the conditions and problems existing at the Montana State Prison and within the state's adult correctional programs generally; and

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WHEREAS, the Governor has appointed an independent Prison Alternatives Task Force to prepare recommendations on alternative correctional programs for Montana, and the task force has yet to complete its work; and

WHEREAS, the Legislature hears the demands of the people of Montana for swift and sure punishment of convicted criminals in a manner insuring the safety and protection of the people of Montana; and

WHEREAS, the Legislature also recognizes its responsibility to provide opportunities for the rehabilitation, reformation, and training of inmates in order to reduce recidivism and produce productive members of society; and

WHEREAS, the Legislature supports the following concepts:

(1) secure incarceration for dangerous offenders;

(2) actual work experience and vocational and on-the-job training for inmates, which instill in them the work ethic and which better utilize facilities such as the prison ranch;

(3) educational opportunities for inmates desiring to avail themselves of such opportunities;

(4) alcohol and drug abuse counseling for inmates; and

(5) cooperation between agencies of state government and the university system for the utilization of staff and services that may be beneficial for the inmates of the prison and society in general;

(6) adequate training programs for the prison staff; and

WHEREAS, the people of Montana have had only limited opportunity to be heard in a structured and productive hearing process for purposes of expressing their concerns and expectations for Montana's correctional system.

THEREFORE, it is the intent of this act that a factfinding task force of the Legislature be created to develop a plan of action on corrections for presentation to the 48th Legislature.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Factfinding task force on corrections — establishment — organization.** (1) There is established an 8-member factfinding task force on corrections.

(2) The task force shall be appointed in the following manner:

(a) The speaker of the house, after consultation with the house majority and minority leaders, shall appoint four members to serve on the task force. No more than two house members of the task force may be from the same party.

(b) The committee on committees of the senate shall appoint four members to serve on the task force. No more than two senate members of the task force may be from the same party.

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(3) Task force members shall elect a chairman and vice-chairman.

(4) Task force members are entitled to compensation and expenses as provided in 5-2-302.

Section 2. **Task force function.** (1) The task force on corrections shall develop a plan of action and recommend policies for consideration by the 48th legislature in order that a comprehensive and coherent correctional policy may be developed for Montana.

(2) In formulating its plan of action and in preparing its recommendations, the task force shall:

(a) solicit wide public participation and hold public hearings on correctional issues;

(b) review the proposals and considerations of past legislative and administration planning and study groups in order to resolve inconsistencies and establish areas of agreement;

(c) utilize outside agencies, individuals, and consultants as the task force considers necessary;

(d) obtain independent cost estimates for any alternative capital projects the task force may recommend;

(e) direct the legislative council to contract, within existing appropriations, with an independent consultant to prepare an estimate for submission to the 48th legislature of the costs of renovating the old territorial Montana state prison in downtown Deer Lodge, Montana; and

(f) in addressing prison physical plant additions, give primary consideration to providing for the segregation of prisoners based upon prisoner attitudes and work assignments to reduce the effects of prejudice against prisoners intent on reformation by hard-core prisoners.

(3) In its review the committee shall:

(a) explore the conditions and problems existing at Montana state prison and within the state's adult corrections programs and the resolution thereof;

(b) suggest appropriation levels for state agencies and programs necessary to alleviate and adequately address the problems and conditions existing in Montana state prison and within the state's adult corrections program; and

(c) monitor the implementation and results of the actions taken by the second special session, including the prison vocational industries program established in [Senate Bill 1].

Section 3. **Use of consultants.** The legislative council, upon request from the task force, shall retain such consultants as required by the task force.

Section 4. **Task force staff.** The legislative council, legislative fiscal analyst, and legislative auditor may provide staffing and assistance to the task force as the task force requires. The legislative council shall assist the

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task force in preparing its reports and recommendations as provided in Title 5.

Section 5. **Appropriation.** There is appropriated $35,000 from the general fund to the legislative council for the purposes of assisting the factfinding task force on corrections as provided in sections 3 and 4.

Section 6. **Effective date — termination.** This act is effective on passage and approval and terminates March 1, 1983.

Approved July 6, 1982.

CHAPTER NO. 3

AN ACT TO ESTABLISH AN INDUSTRIES TRAINING PROGRAM AT THE MONTANA STATE PRISON THAT PROVIDES VOCATIONAL ON-THE-JOB TRAINING AND WORK EXPERIENCE FOR PRISON INMATES; LIMITING THE PROGRAM TO PROVIDING SERVICES AND PRODUCING PERSONAL PROPERTY FOR STATE AGENCIES, LOCAL GOVERNMENTS, SCHOOL DISTRICTS, AND OTHER GOVERNMENTAL ENTITIES; APPROPRIATING FUNDING FOR THE ESTABLISHMENT OF THE PROGRAM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is in the best interest of the state and also in the best interest of inmates incarcerated at the Montana state prison to establish a training and work experience program at the prison; and

WHEREAS, such a program benefits the state by providing inmates with viable skills so that upon release they may become responsible members of society; and

WHEREAS, such a program benefits inmates at the prison by providing an alternative to idle time in prison; the opportunity for training and work experience can provide some measure of meaning and self-worth while incarcerated, while at the same time preparing inmates with skills with which they can support themselves and their families upon release; and

WHEREAS, there is presently an institutional industry program in operation at the prison that is a self-supporting program engaged in license plate manufacture and some agricultural production and personal property refurbishment;

THEREFORE, the institutional industry's small scope and limited goals should be supplemented with a true industries training program capable of inmate reformation that will produce former inmates who upon release are trained, productive and responsible members of society.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Prison industries training program.** (1) In addition to any institutional industry operated at the Montana state prison under Title 53, chapter 1, part 3, the department of institutions shall conduct a prison industries training program.

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(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release.

(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, livestock, furniture, office and electrical equipment, and motor vehicles. Such products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities.

(5) (a) The prison industries training program need not be a self-supporting program. The department of institutions may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the program may be used only for the program.

(b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to explore the possibilities of using the prison industries training program. State agencies shall cooperate with the department of institutions in notifying governmental entities within the state of the program and of the services and products that are available.

(6) (a) An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program as defined by rules adopted by the department of institutions. Such good time allowance has the same effect as a good time allowance granted under 53-30-105, and the provisions of subsections (2) and (3) of 53-30-105 apply to such good time allowance. Provided, however, no inmate may receive good time for participation in this program under any other section or rule which would duplicate the good time authorized herein.

(b) While engaged in on-the-job training and production, inmates may be paid a wage commensurate with their production function. Such wages shall be established at a rate that encourages efficient production and effective levels of inmate participation.

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(c) Inmates working in the prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to such inmates.

(d) Able-bodied persons committed to the Montana state prison as adult offenders shall be required to perform work as provided for by the department of institutions.

(7) (a) The department of institutions shall adopt rules implementing this program and shall report to the legislature its continuing plans and recommendations in implementing this program. Any price lists established by the department are exempt from the provisions of Title 2, chapter 4 (the Montana Administrative Procedure Act), but the department may, if it considers it an effective method of dissemination, publish such price lists in the Montana Administrative Register or the Administrative Rules of Montana, or both.

(b) The department of institutions is subject to program audits of the prison industries training program by the legislative auditor."

Section 2. **Appropriation.** There is appropriated from the general fund to the department of institutions $26,325 to establish the prison industries training program.

Section 3. **Immediate effective date.** This act is effective on passage and approval.

Approved July 14, 1982.

CHAPTER NO. 4

AN ACT TO SPECIFICALLY AUTHORIZE THE DEPARTMENT OF INSTITUTIONS TO MAINTAIN EXISTING COMMUNITY BASED PRERELEASE CENTERS AND TO CONTRACT WITH PRIVATE NONPROFIT MONTANA CORPORATIONS TO ESTABLISH AND MAINTAIN COMMUNITY BASED PRERELEASE CENTERS; AMENDING SECTION 53-1-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-203, MCA, is amended to read:

"**53-1-203. Powers and duties of department.** The department shall:

(1) adopt rules for the admission, custody, transfer, and release of residents of institutions except as otherwise provided by law; however, no such rules may amend or alter the statutory powers and duties of the state board of pardons;

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(2) subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) contract with private nonprofit Montana corporations to establish and maintain community based prerelease centers for purposes of preparing inmates of the Montana state prison who are approaching parole eligibility or discharge for release into the community; the centers shall provide a less restrictive environment than the prison while maintaining adequate security; the centers shall be operated in coordination with other department correctional programs, including the supervised release program provided for in Title 46, chapter 23, part 4. Nothing in this subsection shall affect the department's authority to operate and maintain community based prerelease centers in existence on the effective date of this act.

(4) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(5) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

(6) encourage the establishment of programs at the local level for the prevention and rehabilitation of physical and mental disability."

Section 2. **Effective date.** This act is effective on passage and approval.

Approved July 14, 1982.

CHAPTER NO. 5

AN ACT DIRECTING THE LEGISLATIVE COUNCIL TO CONTRACT, WITHIN EXISTING APPROPRIATIONS, WITH AN INDEPENDENT CONSULTANT TO PREPARE AN ESTIMATE OF THE COSTS OF RENOVATING THE OLD MONTANA STATE PRISON; REQUIRING THE COUNCIL TO SUBMIT THE REPORT TO THE 48TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Capital repairs to old prison — cost estimate.** (1) The legislative council shall, within existing appropriations, contract with an independent consultant to prepare a report estimating the costs of capital repairs necessary to enable the old Montana state prison, built in 1870, to be used for incarcerating maximum security inmates.

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(2) The report must be prepared by December 1, 1982, and the legislative council shall submit the report to the 48th legislature.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved July 14, 1982.

CHAPTER NO. 6

AN ACT AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO HOUSE MINIMUM SECURITY AGRICULTURALLY EMPLOYED PRISONERS OUTSIDE THE CONFINES OF THE PRISON FENCE; ESTABLISHING AN EXEMPTION TO ALLOW FOR TIMELY CONSTRUCTION AND A SOLE SOURCE PURCHASE; PROVIDING PUNISHMENT FOR ESCAPE FROM SUCH CONFINEMENT; APPROPRIATING FUNDS FOR ESTABLISHING HOUSING FOR SUCH INMATES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Extension of limits of confinement.** (1) The department of institutions may extend the limits of confinement of the Montana state prison for purposes of housing outside the prison fence inmates who:

(a) are employed in ranch or agricultural industry programs; and

(b) have demonstrated sufficient reliability and trustworthiness.

(2) Housing units outside the confines of the prison fence may be created by renovation of existing buildings or by the erection of modular-type units and associated facilities on the prison ranch.

Section 2. **Exemptions to facilitate timely construction — sole source purchase allowed.** For the purpose of expediting the acquisition and construction of housing units authorized in [section 1] the department of administration may exempt the project from provisions of Montana law relating to the employment of architects, advertising, labor, and wages. The department of administration need not comply with any state bidding requirements that would preclude a sole source purchase.

Section 3. **Escape from extended confinement.** Purposeful or knowing failure of an inmate to remain within the extended limits of his confinement or to return within the time prescribed by prison officials to the place of confinement designated by the department is an escape punishable as provided in 45-7-306.

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Section 4. **Appropriation.** There is appropriated from the general fund to the department of institutions $130,000 for the establishment of housing outside the confines of the prison fence.

Section 5. **Effective date.** This act is effective on passage and approval.

Approved July 14, 1982.

CHAPTER NO. 7

AN ACT PROVIDING FOR THE USE OF INMATE LABOR IN THE MAINTENANCE AND REPAIR OF THE STATE PRISON; PROVIDING THAT SUCH INMATES ARE NOT EMPLOYEES FOR PURPOSES OF EMPLOYEE RIGHTS; PREVENTING FUTURE PUBLIC EMPLOYEE COLLECTIVE BARGAINING AGREEMENTS FROM PROHIBITING SUCH USE OF INMATE LABOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Prison maintenance by inmates.** An inmate of the Montana state prison may be required to:

(1) keep his own living quarters clean and orderly;

(2) perform general maintenance and repair work on prison grounds and facilities and assist in providing services essential to the administration of the prison, including but not limited to food and laundry services.

Section 2. **Inmates not to be employees.** An inmate working pursuant to [section 1] is not an employee, either public or private, and employment rights accorded other classes of workers do not apply to such inmates.

Section 3. **Nonnegotiable items for state prison.** Collective bargaining agreements entered after [the effective date of this act] may not contain provisions prohibiting or restricting the use of inmate labor as provided for in [section 1].

Section 4. **Applicability.** Section 3 of this act is not intended to impair any existing collective bargaining agreement and is applicable only to those collective bargaining agreements entered after the effective date of this act. Inmate labor restricted by a collective bargaining agreement subject to 53-1-301(7), MCA, shall continue until such agreement expires.

Section 5. **Codification instruction.** Section 3 is intended to be codified as an integral part of Title 39, chapter 31, part 3, and the provisions of Title 39, chapter 31, part 3, apply to section 3.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

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act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** This act is effective on passage and approval.

Approved July 14, 1982.

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APPROPRIATIONS

ENACTED BY THE

Forty-seventh Legislature

IN SECOND SPECIAL

SESSION

STATE OF MONTANA

1982

HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SPECIAL SESSION OF THE FORTY-SEVENTH LEGISLATURE CONVENING ON JUNE 21, 1982; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) The following amounts are appropriated from the general fund for fiscal years 1982 and 1983 for the operation of the special session of the 47th legislature convening on June 21, 1982:

House of Representatives	$123,000
Senate	75,000
Legislative Council	35,000

(2) Each legislator is entitled to reimbursement for expenses pursuant to section 5-2-301(2), MCA, beginning on the day immediately preceding his first day of attendance (including attendance at the presession corrections system briefing on June 19, 1982, or the tour of the Montana state

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prison on June 20, 1982, or both) and salary pursuant to section 5-2-301(1), MCA, beginning on such first day of attendance.

Section 2. **Effective date.** This act is effective on passage and approval.

Approved June 24, 1982

HOUSE BILL NO. 2

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF INSTITUTIONS FOR INCREASED CORRECTIONS COSTS FOR FISCAL YEAR 1983; CLARIFYING THE USE OF PAY PLAN FUNDS AND THEREBY PROVIDING A SUPPLEMENTAL APPROPRIATION FOR FISCAL YEAR 1982; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Department" means the department of institutions.

(2) "Director" means the director of the department of institutions.

Section 2. **Expenditure limit.** Expenditures may not exceed appropriations.

Section 3. **Access to records.** No funds appropriated by this act may be expended for any contract, written or oral, with a nonstate entity for services to be provided by the nonstate entity to members of the public on behalf of the state unless the contract contains a provision allowing access to such records of the nonstate entity as may be necessary for legislative audit and analysis purposes in determining compliance with the terms of the contract. Each such contract may be unilaterally terminated by the state, and each contract shall provide for unilateral termination by the state upon refusal of the nonstate entity to allow access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13.

Section 4. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Other funds to offset general fund.** The approving authority shall decrease the general fund appropriation of the agency by the amount of funds received from other sources in excess of any nongeneral fund appropriation unless such action is expressly contrary to state or federal law, rule, or contract or the approving authority certifies that the services to be funded by the additional funds are significantly different from those for which the agency has received an appropriation.

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Section 6. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 7. **Appropriations.** The following money is appropriated from the general fund for the purposes shown for the stated fiscal year:

	Fiscal Year 1982	Fiscal Year 1983
MONTANA STATE PRISON		
1. General Operations	$103,000	$879,376
2. Utilities Expense — Supplement		11,880
3. Disturbance Control		43,066
TOTAL MONTANA STATE PRISON	$103,000	$934,322

Personal services for Montana state prison may not exceed the total of the $5,076,689 level identified in HB 2, first special session of the 47th legislature, plus the pay plan, and the additional $806,549 appropriated in Item 1 for personal services in fiscal year 1983. Personal services and utilities for Montana state prison may exceed the amount restricted in H.B. 2, Laws of 1981, first special session, for fiscal year 1982.

If utility expenditures exceed $279,646, the institution may ask for a supplemental appropriation. If utilities do not exceed $279,646, the difference shall revert to the general fund. This is an $11,880 supplement to the $267,766 amount for utilities which was in HB 2 of the first special session of the 47th legislature.

Included in the appropriations to the Montana state prison in House Bill 500 of the 1981 Legislature and this act is $493,641 for medical expenses for fiscal year 1983. If medical expenses are less, funds shall revert to the general fund.

CENTRAL OFFICE — DEPARTMENT OF INSTITUTIONS	
Corrections Division	
1. Alpha House — Supplement	$66,092
2. Missoula Life Skills — Supplement	102,465
3. Prerelease Centers	500,819
TOTAL CENTRAL OFFICE — DEPARTMENT OF INSTITUTIONS	$669,376

Item 3 contains money for the establishment of two community prerelease centers. One of the 20-25 bed centers will open September 1, 1982, with the second opening January 1, 1983. The department shall receive applications for placement of the centers and after public hearing, select the appropriate placement and location of the programs. If delays occur in opening the prerelease centers, the director may utilize this appropriation to maintain inmates at the state prison. The director shall notify the legislative finance committee and the office of budget and program planning prior to the transfer of these funds.

BOARD OF PARDONS	
1. General Operations	$14,561

Section 8. **Industries reappropriation.** The unexpended balance of the fiscal year 1982 general fund appropriation made to the prison industries program in HB 2, first special session of the 47th legislature, is reappropriated in fiscal year 1983.

Section 9. **Effective date.** This act is effective June 25, 1982.

Approved July 15, 1982, except for the item vetoed which is set forth in the veto message filed this date with the Secretary of State.

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HOUSE BILL NO. 5

AN ACT TO APPROPRIATE MONEY FOR PRISON SECURITY IMPROVEMENT PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

(2) "BPICA" means account number 06142 in the bond proceeds and insurance clearance fund; "FPRA" means federal and private revenue account; "ERA" means earmarked revenue account; and "other appropriated funds" means money other than general fund or BPICA money that accrues under provisions of law to an agency indicated herein.

(3) "Approved budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within that agency or to obtain financing to expand a project with funds that were not available for consideration by the legislature.

Section 2. **Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved by the 47th legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Total not appropriation.** The total shown in this act is for informational purposes only and is not an appropriation.

Section 5. **General fund appropriation.** There is appropriated from the general fund to account number 06142 in the bond proceeds and insurance clearance fund $397,100 to be used to support the project provided below.

Section 6. **Prison security construction appropriation.** The following money is appropriated from the bond proceeds and insurance clearance fund to the director of the department of administration:

MONTANA STATE PRISON

Security Improvements to Close I and II	$ 67,700
Renovation in Administration Building	88,000
Dual Electronic Systems at Fence	197,000
Lighting	24,850

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Chain Link Fence	2,870
Metal Detectors (3)	16,680
TOTAL MONTANA STATE PRISON	$397,100

Section 7. **Effective date.** This act is effective on passage and approval.

Approved July 14, 1982

HOUSE BILL NO. 8

AN ACT TO APPROPRIATE MONEY FOR PRISON KITCHEN AND WATER SYSTEM CAPITAL IMPROVEMENT PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1983; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

(2) "BPICA" means account number 06142 in the bond proceeds and insurance clearance fund; "FPRA" means federal and private revenue account; "ERA" means earmarked revenue account; and "other appropriated funds" means money other than general fund or BPICA money that accrues under provisions of law to an agency indicated herein.

(3) "Approved budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within that agency or to obtain financing to expand a project with funds that were not available for consideration by the legislature.

Section 2. **Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved by the 47th legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **General fund appropriation.** There is appropriated from the general fund to account number 06142 in the bond proceeds and insurance clearance fund $605,000 to be used to support the project provided for in section 5.

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Section 5. **Construction and improvement appropriation.** The following money is appropriated from the bond proceeds and insurance clearance fund to the director of the department of administration:

DEPARTMENT OF INSTITUTIONS

Kitchen Expansion — Montana State Prison	$205,000
Water System Upgrade — Montana State Prison	400,000

Section 6. **Effective date.** This act is effective on passage and approval.

Approved July 14, 1982

HOUSE BILL NO. 18

AN ACT TO AMEND HOUSE BILL NO. 500, LAWS OF 1981, AS AMENDED BY HOUSE BILL NO. 2, LAWS OF 1981, FIRST SPECIAL SESSION, FOR FISCAL YEAR 1983 TO INCREASE THE APPROPRIATION TO THE DEPARTMENT OF INSTITUTIONS FOR THE PURPOSE OF ADDING REMEDIAL TEACHING STAFF TO THE ACADEMIC PROGRAM AT MONTANA STATE PRISON; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** Section 19, Division D, department of institutions, Montana state prison, Item 1, general operations, House Bill No. 500, Laws of 1981, as amended by House Bill No. 2, Laws of 1981, First Special Session, is amended to increase to $7,100,174 from $7,035,842 the appropriation from the general fund for fiscal year 1983.

Section 2. **Purpose.** This increase in appropriation is intended to provide $64,332 to add remedial staff and instructional materials to the academic program at Montana state prison.

Section 3. **Effective date.** This act is effective July 1, 1982.

Approved July 14, 1982

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RESOLUTION

ENACTED BY THE

Forty-seventh Legislature

IN SECOND SPECIAL

SESSION

STATE OF MONTANA

1982

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HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEPARTMENT OF INSTITUTIONS WITH THE DEPARTMENT OF ADMINISTRATION TO CAREFULLY REVIEW THE EMPLOYMENT CLASSIFICATIONS, POSITIONS, AND GRADES OF CORRECTIONS PERSONNEL AT THE MONTANA STATE PRISON TO ESTABLISH EQUITY AMONG POSITIONS, TO ENHANCE CAREER OPPORTUNITIES, AND TO FURTHER THE RECRUITMENT AND RETENTION OF SUPERIOR PERSONNEL.

WHEREAS, the circumstances at the Montana State Prison must be considered overall in light of the prison's goals and objectives; and

WHEREAS, one of the components of the prison which could be upgraded in a relatively inexpensive manner and which would produce results out of proportion to its cost is insuring the commitment of corrections personnel to the goals and objectives of the prison; and

WHEREAS, motivated correctional personnel are a vital component in prison improvement because such people are in day-to-day contact with prisoners, the prison administration, and the physical plant; and

WHEREAS, the recruitment and retention of superior individuals as correctional personnel cannot help but be cost effective in long-term prison operations and helpful in inmate reformation; and

WHEREAS, inadequate or inequitable situations of pay grades for various corrections positions increase corrections personnel dissatisfaction with employment conditions, thus unduly reducing their commitment to proper job performance; and

WHEREAS, the Department of Administration establishes pay grades for various positions in state government employment based in part on studies and recommendations of the employing department.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Department of Institutions, with the assistance of the Department of Administration, is urged to carefully review the positions, classifications, and grades of correctional personnel at the Montana State Prison to the end that the pay grades of such positions are equitably established to:

(a) encourage the recruitment, motivation, and retention of personnel; and

(b) establish an orderly career path for corrections personnel by providing for rational grade increases commensurate with ability and experience.

(2) That copies of this resolution be sent to the Director, Department of Institutions, and to the Director, Department of Administration.

Approved June 30, 1982.

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EFFECTIVE DATES TABLE

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EFFECTIVE DATE TABLE

Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that:

"Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein."

The following is a list of specially designated effective dates for the 47th legislature in special session and the 48th legislature in regular session.

Chapter No.	Effective Date
Ch. 1 Sp. L. 1981	11/25/81
Ch. 2 Sp. L. 1981	1/1/82
Ch. 3 Sp. L. 1981	1/1/82
Ch. 4 Sp. L. 1981	1/1/82
Ch. 5 Sp. L. 1981	1/1/82
Ch. 6 Sp. L. 1981	11/25/81
Ch. 8 Sp. L. 1981	11/30/81
Ch. 9 (§ 1) Sp. L. 1981	11/30/81
(§§ 2, 3) Sp. L. 1981	9/26/82
Ch. 10 Sp. L. 1981	1/1/82
Ch. 11 Sp. L. 1981	7/1/82
Ch. 1 Sp. L. 1982	6/29/82
Ch. 2 Sp. L. 1982	7/6/82
Ch. 3 Sp. L. 1982	7/14/82
Ch. 4 Sp. L. 1982	7/14/82
Ch. 5 Sp. L. 1982	7/14/82
Ch. 6 Sp. L. 1982	7/14/82
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Ch.	116	3/17/83
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50-5-106 new version	7/1/87
50-5-301	repealed 7/1/87 unless reenacted
50-5-302	repealed 7/1/87 unless reenacted
50-5-304-308	repealed 7/1/87 unless reenacted
(§ 8-10)	repealed 7/1/87 unless reenacted
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Ch. 664	4/27/83
Ch. 667	4/28/83
Ch. 668	7/1/83
Ch. 671	4/29/83
Ch. 672	7/1/83
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Ch. 682	4/29/83
Ch. 685	4/29/83
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Ch. 707	7/1/83
Ch. 708	7/1/83
Ch. 709	7/1/83
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HB	1 Sp. L. 1981	11/19/81
HB	2 Sp. L. 1981	12/4/81
HB	1 Sp. L. 1982	6/24/82
HB	2 Sp. L. 1982	6/25/82
HB	5 Sp. L. 1982	7/14/82
HB	8 Sp. L. 1982	7/14/82
HB	18 Sp. L. 1982	7/1/82
HB	1	4/28/83
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HB	76	1/14/83
HB	84	3/22/83
HB	95	2/18/83
HB	131	3/22/83
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HB	924	4/26/83

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EFFECTIVE DATE TABLE

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Effective Date	Chapter No.
11/19/81	HB 1 Sp. L. 1981
11/25/81	Ch. 1 Sp. L. 1981
11/25/81	Ch. 6 Sp. L. 1981
11/30/81	Ch. 8 Sp. L. 1981
11/30/81	Ch. 9 (§ 1) Sp. L. 1981
12/4/81	HB 2 Sp. L. 1981
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6/24/82	HB 1 Sp. L. 1982
6/25/82	HB 2 Sp. L. 1982
6/29/82	Ch. 1 Sp. L. 1982
7/1/82	HB 18 Sp. L. 1982
7/1/82	Ch. 11 Sp. L. 1981
7/6/82	Ch. 2 Sp. L. 1982
7/14/82	HB 5 Sp. L. 1982
7/14/82	HB 8 Sp. L. 1982
7/14/82	Ch. 3 Sp. L. 1982
7/14/82	Ch. 4 Sp. L. 1982
7/14/82	Ch. 5 Sp. L. 1982
7/14/82	Ch. 6 Sp. L. 1982
7/14/82	Ch. 7 Sp. L. 1982
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135	1	31-1-242
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136	1	77-1-202
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185	1	37-62-101
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195	1	Coal area highway improvement account — extension of deadline
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199	1	22-3-431
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204	1	46-18-203
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205	1	32-6-203
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209	1	70-17-101
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224	1	20-4-108
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235	1	46-23-201
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237	1	53-10-501
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238	1	7-14-102
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243	1	Reestablishment
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244	1	7-16-4114
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245	1	39-51-201
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246	1	85-5-101
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247	1	Board renamed — instructions to Code Commissioner
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265	1	75-2-212
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266	1	20-4-104
267	1	87-3-204
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268	1	61-3-108
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269	1	70-9-101
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270	1	20-15-404
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271	1	Board transferred — section renumbered
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273	1	39-51-408
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287	1	2-7-501
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289	1	19-13-601(2)
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290	1	19-3-511
	2	19-4-409
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291	1	44-4-103
292	1	46-19-103
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293	1	3-5-101
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294	1	7-16-2205
295	1	33-2-705
296	1	70-20-315
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	46	90-2-102
	47	90-2-112
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	49	90-2-122
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	51	90-2-124
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	56	Effective date
299	1	61-7-109
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300	1	33-18-231
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301	1	87-5-201
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309	1	33-30-1007
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313	1	87-1-304
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317	1	71-3-703
318	1	44-11-301
	2	44-11-302
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319	1	46-20-104
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320	1	32-4-101
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321	1	2-8-105
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	4	30-10-105
	5	30-10-107
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323	1	15-6-131
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324	1	50-5-101
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325	1	7-12-2127 7-12-4130
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326	1	15-35-107
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327	1	69-3-305
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328	1	85-7-1904
329	1	50-5-101
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330	1	85-7-2103
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331	1	19-3-509
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332	1	41-5-704
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333	1	81-7-501
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334	1	3-1-1106
335	1	37-50-102
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336	1	50-50-205
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337	1	53-5-103
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339	1	39-5-303
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340	1	75-15-203
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342	1	7-21-3403
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345	1	61-8-359
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350	1	19-1-815
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351	1	22-3-423
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352	1	46-14-221
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353	1	81-2-109
354	1	37-67-308
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355	1	20-5-102
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356	1	50-8-101
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357	1	39-51-204
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366	1	39-3-602
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367	1	7-5-2145
368	1	32-5-403
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369	1	39-51-406
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370	1	Refund of overpayment of 1982 property taxes
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371	1	72-25-101
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372	1	7-6-4453
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373	1	33-3-202
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374	1	Voided by Sec. 4
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375	1	39-3-406
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376	1	27-6-101
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378	1	15-30-131
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380	1	15-30-106
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383	1	15-23-615
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384	1	20-9-513
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385	1	70-23-613
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389	1	44-2-401
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391	1	7-8-2513
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392	1	46-18-224
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393	1	45-9-101
394	1	44-1-1005
395	1	33-17-404
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396	1	71-3-201
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398	1	15-8-115
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403	1	72-17-102
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404	1	7-3-155
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408	1	7-4-2917
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409	1	69-12-611
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410	1	87-4-101
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412	1	60-3-205

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414	1	61-3-712
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422	1	7-12-2181
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425	1	19-5-103
426	1	46-18-241
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427	1	37-21-101
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428	1	Voided by Sec. 3 (coordination section)
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429	1	2-4-302
430	1	10-1-104
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431	1	22-1-304
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432	1	28-2-704
	2	28-2-705
433	1	61-8-714
434	1	31-1-234
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435	1	32-1-481
	2	Effective date
436	1	69-14-1001
437	1	13-10-503
438	1	45-5-613
439	1	2-17-103
	2	Effective date
440	1	7-14-111
	2	Effective date
441	1	61-3-443
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	3	61-3-445
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	5	Codification
	6	Effective date
442	1	69-4-602
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443	1	19-4-804
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444	1	Reestablishment
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447	1	15-31-114
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	12	85-2-312
	13	85-2-314
	14	85-2-315
	15	85-2-402
	16	85-2-403
	17	85-2-319
	18	Codification
	19	Severability
	20	Effective date
449	1	40-4-219
450	1	61-1-103
	2	61-1-123
	3	61-8-333
	4	61-8-336
	5	61-8-338
	6	61-8-354
	7	61-8-368
	8	61-8-504
	9	61-8-602
	10	61-8-604
	11	61-8-605
	12	61-8-509
	13	61-8-608
	14	Codification
	15	Effective date
451	1	45-9-111
	2	45-9-112
	3	45-9-113
	4	45-9-114
	5	45-9-115
	6	45-9-116
	7	45-9-202
	8	Codification
	9	Severability
452	1	20-9-204
453	1	19-4-101
	2	Effective date
454	1	37-11-307
	2	37-11-310
	3	Effective date
455	1	30-13-202
	2	30-13-205
	3	Effective date
456	1	35-1-213
	2	35-1-301
	3	35-1-303
	4	35-1-1006
	5	35-1-1020
	6	35-2-301
	7	35-2-805
	8	35-2-819
457	1	7-14-4109
	2	7-14-4110
	3	Effective date
458	1	19-3-402
	2	Effective date
459	1	77-1-208
	2	Codification
460	1	20-1-301
	2	Coordination
461	1	20-7-401
462	1	61-10-124
	2	Effective date
463	1	85-7-1956
464	1	80-5-101
	2	80-5-102
	3	80-5-104
	4	80-5-107
	5	80-5-112
	6	80-5-201
	7	80-5-202
	8	80-5-203
	9	80-5-204
	10	Effective date
465	1	53-2-201
	2	41-5-103
	3	41-5-306
	4	41-5-403
	5	41-5-523
	6	41-3-1101
	7	41-3-1102
	8	41-3-1103
	9	41-3-1106
	10	41-5-801 (renum. 41-3-1121)
	11	41-3-104 (renum. 41-3-1122)
	12	41-3-405 (Combined with 41-5-805 and renum. 41-3-1123)
	13	41-5-805 (Combined with 41-3-405 and renum. 41-3-1123)
	14	41-3-407 (Combined with 41-5-806 and renum. 41-3-1124)

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	15	41-3-105 (renum. 41-3-1125)
	16	41-3-501 (renum. 41-3-1102 (3) and (4))
	17	41-3-1103 (2) (c)
	18	41-3-1131
	19	41-3-1132
	20	41-3-502 (renum. 41-3-1141)
	21	41-3-503 (renum. 41-3-1142)
	22	41-3-504 (renum. 41-3-1143)
	23	41-3-1112
	24	41-3-1113
	25	41-3-1114
	26	41-3-1104
	27	20-15-403
	28	76-2-313
	29	76-2-314
	30	41-5-107
	31	Codification and Code Commissioner instructions
	32	Repealer
	33	Effective date
466	1	2-4-305
	2	5-4-402
	3	Applicability
467	1	7-4-2631
	2	7-4-2632
468	1	19-13-110
	2	19-13-1006
	3	19-13-1007
	4	Codification
	5	Effective date
469	1	10-2-403
470	1	39-71-401
471	1	33-30-1011
	2	Codification
472	1	7-7-2501
	2	Codification
473	1	76-15-301
	2	76-15-311
	3	76-15-313
	4	76-15-319
	5	76-15-502
	6	76-15-515
	7	76-15-516
	8	76-15-517
	9	76-15-523
	10	76-15-804
	11	76-15-541
	12	76-15-542
	13	76-15-543
	14	76-15-544
	15	76-15-545
	16	76-15-546
	17	76-15-547
	18	76-15-501
	19	76-15-512
	20	76-15-524
	21	76-15-527
	22	Codification
	23	Effective date
474	1	60-2-311
	2	Codification
475	1	20-9-322
	2	20-9-316
	3	20-9-318
	4	Codification
	5	Coordination
	6	Effective date
476	1	7-12-2153
477		Contingent upon passage of constitutional amendment required by HB 151 (see Sec. 7)
	1	5-1-101
	2	5-1-106
	3	5-1-108
	4	5-1-109
	5	5-1-110
	6	5-1-111
	7	Contingent effective date
478	1	20-9-209
479	1	20-3-332
480	1	15-32-201
	2	Voided by Sec. 5
	3	Voided by Sec. 5
	4	Voided by Sec. 5
	5	Coordination
	6	Applicability
481	1	20-20-417
	2	20-20-401
	3	Codification
482	1	45-9-121
	2	Codification
483	1	32-1-109
	2	Effective date
484	1	17-8-241
	2	17-8-242
	3	17-8-244
	4	17-8-243
	5	Codification
485	1	39-32-102
	2	39-32-103
	3	39-32-104
	4	39-32-105
	5	39-32-106
	6	39-32-109
	7	39-32-109 (2)
	8	39-32-112
	9	39-32-113
	10	39-32-114
	11	Codification
	12	Repealer
486	1	2-17-301
	2	18-4-111 (renum. 2-17-501 by Code Commissioner, 1983)
	3	2-17-502
	4	Codification
	5	Effective date
487	1	61-10-104
	2	61-10-107
	3	61-10-124
	4	61-10-144

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488	1	61-1-131
	2	15-1-101
489	1	82-4-335
	2	90-6-305
	3	90-6-307
	4	90-6-309
	5	90-6-311
	6	Codification
490	1	37-65-102
	2	37-65-202
	3	37-65-301
	4	37-65-302
	5	37-65-303
	6	37-65-305
	7	37-65-321
	8	37-65-322
	9	37-65-204
	10	Codification
491	1	18-2-101
	2	18-2-103
	3	18-2-111
	4	18-2-112
	5	Effective date
492	1	3-10-208
	2	25-31-112
	3	25-35-601
	4	25-35-605
493	1	5-2-402
494	1	87-2-102
	2	87-2-104
	3	87-2-106
	4	87-2-111
	5	87-2-202
495	1	87-3-507
	2	Codification
496	1	71-3-1118
	2	71-3-1112
	3	39-71-743
497	1	33-1-1101
	2	33-1-1102
	3	33-1-1111
	4	33-1-1113
	5	33-1-1112
	6	33-1-1114
	7	Codification
498	1	33-20-202
	2	33-20-203
	3	33-20-204
	4	33-20-206
	5	33-20-207
	6	33-20-208
	7	33-20-209
	8	33-20-211
	9	33-20-210
	10	33-20-212
	11	Codification
499	1	82-4-254
	2	Effective date
500	1	82-10-103
	2	82-10-102
	3	Codification
501	1	15-30-122
	2	Applicability
502	1	7-33-2106
503	1	23-5-104 (2) through (5)
	2	23-5-104
	3	23-5-121
	4	Codification
504	1	20-5-311
	2	20-5-312
	3	Effective date
505	1	49-2-509
	2	Codification
	3	Effective date
506	1	2-15-1882
	2	23-3-301
	3	23-3-401
	4	23-3-402
	5	23-3-403
	6	23-3-404
	7	23-3-405
	8	23-3-501
	9	23-3-502
	10	23-3-601
	11	23-3-602
	12	23-3-603
	13	23-3-611
	14	Repealer
	15	Effective date
507	1	32-1-213
	2	Effective date
508	1	7-5-2109
	2	7-23-2108
	3	7-23-104
	4	Severability
509	1	18-8-105
510	1	Proposed rules not to be effective until Jan. 1, 1986
	2	Current rules to remain in effect
511	1	72-2-101
	2	72-16-331
	3	72-16-332
	4	72-16-333
	5	72-16-334
	6	72-16-335
	7	72-16-337
	8	72-16-338
	9	72-16-339
	10	72-16-341
	11	72-16-342
	12	72-16-452
	13	72-16-456
	14	72-16-463
	15	72-16-464
	16	72-16-603
	17	72-16-343
	18	72-16-344
	19	72-16-345
	20	72-16-346
	21	72-16-347
	22	72-16-348
	23	72-16-349
	24	72-16-491
	25	Codification
	26	Applicability date
512	1	13-27-303 (2)
	2	Effective date
513	1	53-24-103
	2	53-24-108

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	3	53-24-206
	4	53-24-209
	5	Effective date
514	1	15-70-201
	2	15-70-202
	3	Effective date
515	1	20-10-141
	2	Effective date
516	1	53-6-401
	2	53-6-402
	3	53-6-402 (2)
	4	53-6-402 (3)
	5	53-6-402 (4)
	6	Severability
	7	Effective date
517	1	17-2-107
	2	Applicability date
	3	Effective date
518	1	33-1-501
	2	33-2-119
	3	33-2-705
	4	33-2-1206
	5	33-17-102
	6	33-17-103
	7	33-17-201
	8	33-19-304
	9	33-20-1210
	10	33-22-229
519	1	18-4-121
	2	18-4-122
	3	18-4-123
	4	18-4-131
	5	18-4-126
	6	18-4-221
	7	18-4-222
	8	18-4-223
	9	18-4-241
	10	18-4-242
	11	18-4-125
	12	18-4-301
	13	18-4-302
	14	18-4-303
	15	18-4-304
	16	18-4-305
	17	18-4-306
	18	18-4-307
	19	18-4-308
	20	18-4-309
	21	18-4-310
	22	18-4-311
	23	18-4-312
	24	18-4-313
	25	18-4-314
	26	Retention of procurement records. Merged with 18-4-126 (2)
	27	18-4-306
	28	18-4-231
	29	18-4-232
	30	18-4-233
	31	18-4-234
	32	18-4-224
	33	18-4-225
	34	18-4-226 (1)
	35	18-4-226 (2)
	36	18-4-226 (3)
	37	18-4-401
	38	18-4-402
	39	18-4-403
	40	18-4-404
	41	18-4-405
	42	18-4-406
	43	18-4-407
	44	18-4-132
	45	18-4-124
	46	18-7-107
	47	18-4-104 Renum. 18-4-133 by Code Commissioner 1983
	48	18-7-104
	49	18-7-105
	50	87-1-209
	51	Codification
	52	Severability
	53	Repealer
	54	Effective date
520	1	33-2-523
	2	33-2-524
	3	33-2-527
	4	33-2-528
	5	33-2-529
	6	33-2-525
	7	33-2-526
	8	33-2-536
	9	Codification
521	1	20-4-203
	2	20-4-204
522	1	53-21-114
	2	53-21-131
523	1	15-6-201
	2	Effective date
524	1	25-1-201
	2	19-5-402
	3	19-5-404
	4	19-5-503
	5	Effective date
525	1	20-10-101
	2	61-1-116
	3	Effective date
526	1	70-20-115
	2	7-2-4312
	3	7-3-1309
	4	7-3-4431
	5	7-3-4448
	6	7-13-2304
	7	7-14-4109
	8	7-15-4215
	9	7-22-2406
	10	7-22-2446
	11	15-7-102
	12	15-7-208
	13	15-15-101
	14	15-18-202
	15	15-23-102
	16	50-62-103
	17	69-4-317
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	19	69-4-353
	20	70-30-203
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	22	80-7-114
	23	80-7-206
	24	82-2-224
	25	82-4-222
	26	82-4-239
	27	82-10-503
	28	85-2-232
	29	85-2-307
	30	85-15-202
527	1	19-4-602
	2	19-4-605
	3	19-4-801
	4	19-4-802
	5	Effective date
528	1	15-23-502
	2	15-23-503
	3	Applicability date
529	1	13-37-218
	2	Codification
530	1	2-9-305
	2	Effective date
531	1	49-2-309
	2	Codification
	3	Applicability
	4	Effective date
532	1	46-18-222
533	1	46-18-101
534	1	87-2-902
	2	87-2-903
	3	Effective date
535	1	32-1-433
	2	Effective date
536	1	17-7-401
	2	17-7-402
	3	17-7-403
	4	17-7-404
	5	17-7-405
	6	5-12-401
	7	5-12-402
	8	17-8-103
	9	17-8-104
	10	Severability
	11	Effective date
537	1	16-4-109
	2	Codification
	3	Effective date
538	1	2-18-104
539	1	80-4-401
	2	80-4-402
	3	80-4-403
	4	80-4-404
	5	80-4-405
	6	80-4-406
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	22	80-4-501
	23	80-4-502
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	29	80-4-522
	30	80-4-523
	31	80-4-524
	32	80-4-525
	33	80-4-526
	34	80-4-527
	35	80-4-528
	36	80-4-529
	37	80-4-530
	38	80-4-531
	39	80-4-532
	40	80-4-533
	41	80-4-534
	42	80-4-535
	43	80-4-536
	44	80-4-537
	45	80-4-538
	46	80-4-539
	47	80-4-601
	48	80-4-602
	49	80-4-603
	50	80-4-604
	51	80-4-605
	52	80-4-606
	53	80-4-607
	54	80-4-608
	55	80-4-701
	56	80-4-702
	57	80-4-703
	58	80-4-704
	59	80-4-705
	60	80-4-706
	61	80-4-707
	62	80-4-708
	63	80-4-709
	64	80-4-710
	65	80-4-721
	66	80-4-722
	67	80-4-723
	68	80-4-724
	69	80-4-725
	70	80-4-726
	71	80-4-727
	72	80-5-201
	73	80-5-202
	74	80-5-203
	75	Repealer
	76	Severability
	77	Effective date
540	1	49-3-101
	2	49-3-106
	3	49-3-209
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	12	49-3-311
	13	49-3-312
	14	Repealer
	15	Codification
	16	Effective date
541	1	60-3-216
	2	60-3-217
	3	60-3-218
	4	17-3-201
	5	15-35-108
	6	Codification
	7	Effective date — termination date
542	1	7-5-4301
	2	Effective date
543	1	20-1-212
	2	20-7-101
	3	20-9-215
544	1	2-15-1854
	2	37-22-101
	3	37-22-102
	4	37-22-201
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	12	37-22-401
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	15	Codification
	16	Severability
545	1	13-35-234
546	1	7-33-4111
547	1	7-8-2211
	2	7-8-2220
	3	7-8-2218
548	1	20-7-431
	2	Effective date
549	1	13-27-402
	2	13-27-403
550	1	2-15-1891
	2	37-60-101
	3	37-60-103
	4	37-60-104
	5	37-60-105
	6	37-60-201
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	8	37-60-211
	9	37-60-212
	10	37-60-301
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	17	37-60-308
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	19	37-60-320
	20	37-60-310
	21	37-60-312
	22	37-60-314
	23	37-60-321
	24	37-60-322
	25	37-60-402
	26	37-60-403
	27	37-60-404
	28	37-60-405
	29	37-60-406
	30	37-60-407
	31	37-60-411
	32	Application of act to existing businesses
	33	Codification
	34	Repealer
	35	Effective date
551	1	7-4-2617
552	1	22-2-401
	2	22-2-402
	3	22-2-403
	4	22-2-404
	5	22-2-405
	6	22-2-406
	7	22-2-407
	8	22-2-408
	9	Severability
	10	Effective date — applicability
553	1	85-7-1961
	2	Effective date
554	1	90-8-101
	2	90-8-102
	3	90-8-103
	4	90-8-104
	5	90-8-201
	6	90-8-202
	7	90-8-203, 90-8-301
	8	90-8-312
	9	90-8-302
	10	90-8-303
	11	90-8-311
	12	90-8-313
	13	90-8-321
	14	90-8-304
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	17	90-8-105
	18	Coordination
	19	Severability
	20	Effective date
555	1	39-51-1301
	2	Effective date
556	1	37-41-104
	2	37-41-101
	3	37-41-103
	4	37-41-201
	5	37-41-202
	6	37-41-211
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	9	Saving clause
	10	Severability
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	12	Repealer
557	1	17-5-901

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	9	17-5-922
	10	17-5-923
	11	17-5-924
	12	17-5-925
	13	17-5-926
	14	17-5-927
	15	17-5-928
	16	17-5-929
	17	17-5-930
	18	Effective date
558	1	13-1-302
559	1	20-10-141
560	1	53-21-129
	2	Effective date
561	1	32-1-322
562	1	7-32-4118
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563	1	Reestablishment
	2	2-8-103
	3	2-15-1881
	4	23-4-101
	5	23-4-104
	6	23-4-105
	7	23-4-106
	8	23-4-201
	9	23-4-202
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	11	23-4-301
	12	23-4-302
	13	23-4-304
	14	23-4-305
	15	Appointment of board members — terms
	16	Codification
	17	Effective date
564	1	41-3-102
	2	41-3-405
	3	41-3-406
	4	41-3-407
	5	41-3-408
	6	41-1-306
	7	Codification
	8	Effective date
565	1	37-30-101
	2	37-30-203
	3	37-30-301
	4	37-30-303
	5	37-30-307
	6	37-30-306
	7	37-30-402
	8	37-30-403
	9	37-30-404
	10	37-30-405
	11	37-30-406
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	15	37-30-424
	16	37-30-425
	17	37-30-501
	18	Repealer
	19	Effective date
	20	Applicability
	21	Codification
566	1	Voided by Sec. 5
	2	Voided by Sec. 5
	3	Voided by Sec. 5
	4	Voided by Sec. 5
	5	Coordination
	6	Voided by Sec. 5
567	1	31-1-107
	2	Effective date
568	1	5-7-101
	2	5-7-102
	3	5-7-208
	4	5-7-302
	5	Coordination
	6	Effective date
569	1	53-20-102
	2	53-20-105
	3	53-20-106
	4	Codification
570	1	87-4-406
	2	87-4-407
	3	87-4-408
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	5	87-4-410
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	9	87-4-414
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	18	87-4-423
	19	Current licenses valid
	20	87-4-901
	21	87-4-902
	22	87-4-903
	23	87-4-904
	24	87-4-905
	25	87-4-906
	26	87-4-907
	27	87-4-908
	28	87-4-909
	29	87-4-910
	30	87-4-911
	31	87-4-912
	32	87-4-913
	33	87-4-914
	34	87-4-915
	35	87-4-916
	36	87-4-1001
	37	87-4-1002
	38	87-4-1003
	39	87-4-1004
	40	87-4-1005
	41	87-4-1006
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	44	87-4-1009
	45	87-4-1010
	46	87-4-1011
	47	87-4-1012
	48	87-4-1013
	49	87-1-606
	50	Waiver of initial fee
	51	Repealer
	52	Codification
571	1	81-6-301
	2	81-6-302
	3	2-15-3104
	4	81-6-312
	5	81-6-311
	6	81-6-313
	7	81-6-313 (2) (g)
	8	81-6-314
	9	Codification
	10	Appropriation
	11	Effective date
572	1	7-12-4601
	2	7-12-4602
	3	7-12-4603
	4	7-12-4604
	5	7-12-4605
	6	7-12-4606
	7	7-12-4611
	8	7-12-4612
	9	Preexisting districts
	10	Effective date
573	1	17-8-107
	2	Effective date
574	1	75-3-202
	2	Effective date
575	1	20-15-241
	2	20-15-314
	3	20-15-311
	4	20-15-231
	5	Effective date
576	1	17-5-205
	2	Effective date
577	1	30-10-304
	2	30-14-221
	3	46-4-305
	4	46-15-311
578	1	53-21-102
	2	53-21-105
	3	53-21-106
	4	Codification
579	1	17-3-110
	2	Effective date
580	1	2-15-3011
	2	80-12-101
	3	80-12-102
	4	80-12-103
	5	80-12-201
	6	80-12-202
	7	80-12-203
	8	80-12-204
	9	80-12-205
	10	80-12-301
	11	80-12-302
	12	80-12-308
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	24	80-12-307
	25	80-12-401
	26	80-12-402
	27	80-12-104
	28	80-12-403
	29	Codification
	30	Severability
581	1	45-6-101
	2	45-6-301
	3	45-6-309
	4	45-6-311
	5	45-6-316
	6	45-6-317
	7	45-6-325
	8	45-7-210
	9	46-18-201
582	1	82-10-104
	2	45-2-311
	3	82-10-102
	4	Codification
583	1	35-1-1004
584	1	69-12-102
585	1	19-13-104
	2	Effective date
586	1	13-13-222
	2	13-13-205
	3	Codification
587	1	50-15-111
	2	Saving clause
	3	Effective date
588	1	Reestablishment
	2	2-8-103
	3	69-1-114
	4	Sec. 9, Ch. 607, L. 1981
		69-7-101
		69-7-111
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	18	69-12-423
	19	Codification

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	20	Effective dates
589	1	2-4-406
	2	2-4-506
	3	Codification
590	1	40-4-204
591	1	30-12-203
	2	Effective date
592	1	50-6-307
593	1	33-22-701
	2	33-22-702
	3	33-22-703
	4	33-22-704
594	1	53-1-401
	2	53-1-404
	3	53-1-405
	4	53-1-409
	5	53-1-413
595	1	16-1-106
	2	16-4-105
	3	16-4-201
	4	16-4-501
	5	Repealer
596	1	17-7-102
	2	17-7-123
597	1	50-5-225
	2	50-5-226
	3	50-5-227
	4	50-5-228
	5	50-5-229
	6	50-5-230
	7	50-5-101
	8	50-51-102
	9	50-51-107
	10	Coordination
	11	Codification
598	1	60-2-112
599	1	15-6-138
	2	15-6-136
	3	15-6-202
	4	Effective date
600	1	16-11-114
	2	16-11-115
601	1	61-10-145
	2	61-10-148
	3	3-10-303
602	1	61-8-402
	2	61-8-403
603	1	13-1-101
	2	13-1-104
604	1	2-15-1705
	2	Transition — appointment of new members
	3	Effective date
605	1	15-30-171
	2	Effective date — applicability
606	1	15-23-103
	2	15-23-104
	3	15-23-602
	4	Effective date — applicability date
607	1	69-14-232
608	1	16-11-111
	2	16-11-119
	3	17-5-408
	4	Effective date
609	1	85-3-401
	2	85-3-411
	3	85-3-412
	4	85-3-421
	5	85-3-422
	6	85-3-414
	7	85-3-417
	8	85-3-413
	9	85-3-416
	10	85-3-415
	11	85-3-423
	12	85-3-424
	13	Codification
	14	Effective date
610	1	69-3-701
	2	69-3-703
	3	69-3-702
	4	69-3-712
	5	69-3-711
	6	69-3-713
	7	15-32-107
	8	Codification
611	1	27-1-717
	2	27-1-717 (4)
	3	Effective date
612	1	3-10-303
	2	45-9-102
	3	Repealer
613	1	40-4-202
	2	Severability
614	1	49-4-301
	2	49-4-302
	3	49-4-304
	4	49-4-305
	5	10-2-301
	6	49-4-307
	7	Codification
	8	Effective date
615	1	7-33-2202
	2	Effective date
616	1	40-9-102
617	1	20-6-314
	2	20-6-315
	3	20-6-316
	4	20-6-317
	5	20-6-318
	6	20-6-319
	7	20-6-320
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	9	20-6-304
	10	20-6-311
	11	20-6-402
	12	20-6-403
	13	Repealer
	14	Codification
618	1	45-8-343
619	1	15-37-117
	2	90-6-321
	3	90-6-322
	4	15-1-501
	5	15-37-101
	6	15-37-103
	7	90-6-303
	8	90-6-304
	9	90-6-305

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	10	90-6-306
	11	Codification
	12	Effective date — applicability
620	1	17-5-1601
	2	17-5-1602
	3	17-5-1603
	4	17-5-1604
	5	17-5-1605
	6	17-5-1606
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	29	17-5-1647
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	31	17-5-1649
	32	17-5-1650
	33	17-5-1651
	34	Severability
	35	Coordination
	36	Effective date
621	1	76-13-601
	2	76-13-601 (5)
622	1	70-30-104
	2	70-30-111
	3	70-30-201
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	12	Repealer
	13	Saving clause
623	1	53-5-501
	2	53-5-502
	3	53-5-503
	4	53-5-511
	5	53-5-512
	6	53-5-513
	7	53-5-514
	8	53-5-521
	9	53-5-504
	10	53-5-525
	11	Severability
624	1	15-70-204
	2	15-70-321
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	4	Effective date
625	1	7-6-2512
	2	7-34-2134
	3	7-34-2417
	4	53-2-321
	5	53-2-322
	6	Effective date
626	1	10-3-312
	2	Effective date
627	1	87-5-102
	2	87-5-121
	3	15-30-150
	4	87-5-122
	5	87-5-123
	6	Codification
	7	Applicability — termination
628	1	50-16-401
	2	Appropriation
	3	Effective date
629	1	20-9-316
	2	20-9-317
	3	20-9-318
	4	20-9-319
	5	Effective date
630	1	80-11-201
	2	80-11-205
	3	80-11-212
	4	Codification
	5	Effective date
	6	Termination date
631	1	7-7-2211
	2	7-7-2251
	3	7-7-2254
	4	7-7-4210
	5	7-7-4251
	6	7-7-4254
	7	20-9-408
	8	20-9-430
	9	20-9-432
632	1	15-1-101
	2	15-6-134
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633	1	80-8-105
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	3	80-8-201
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	8	80-8-213
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	10	80-8-116
	11	Codification
	12	Saving clause
	13	Severability
634	1	15-30-111
	2	15-30-201
	3	Contingent termination date
635	1	90-6-401

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	2	90-6-402
	3	90-6-403
	4	90-6-404
	5	90-6-405
	6	Effective date
	7	Codification
636	1	16-4-204
	2	Effective date
637	1	2-4-308
	2	Codification
638	1	53-5-111
	2	Appropriation, 53-5-111(2)
	3	Effective date
639	1	50-73-401
640	1	39-3-406
	2	39-4-107
641	1	50-5-101
	2	Saving clause
	3	Severability
642	1	Reestablishment
	2	2-8-103
	3	37-43-303
	4	37-43-305
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	7	37-43-311
	8	37-43-308
	9	Codification
	10	Effective date
643	1	17-5-414
	2	17-5-415
	3	17-5-416
	4	17-5-417
	5	Coordination
	6	Effective date
644	1	15-7-201
	2	Delayed effective date
645	1	53-5-601
	2	53-5-602
	3	53-5-603
	4	53-5-604
	5	53-5-605
	6	53-5-606
	7	Codification
	8	Effective date
646	1	2-18-501
647	1	7-7-2302
	2	7-7-4302
	3	7-7-4311
	4	7-7-4503
	5	7-7-4501
	6	20-9-412
	7	7-7-2316
	8	7-7-4316
	9	Effective date
648	1	15-32-401
	2	15-32-402
	3	15-32-403
	4	15-32-404
	5	15-32-405
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	7	15-32-407
	8	Coordination
	9	Effective and applicability date
649	1	15-70-501
	2	15-70-502
	3	15-70-503
	4	15-70-511
	5	15-70-512
	6	15-70-513
	7	15-70-514
	8	15-70-521
	9	15-70-522
	10	15-70-523
	11	15-70-527
	12	15-70-204
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	14	Repealer
	15	Codification
	16	Effective date
650	1	90-15-101
	2	90-15-102
	3	2-15-1018
		90-15-201
		90-15-202
		90-15-203
	4	90-15-301
	5	90-15-302
	6	90-15-303
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	8	Environmental quality council to monitor activities of department and committee
	9	Appropriation and funding, 90-15-103
651	1	53-2-801
	2	53-2-802
	3	53-2-811
	4	53-2-812
	5	53-2-821
	6	53-2-803
	7	53-2-813
	8	53-2-822
	9	53-2-301
	10	53-2-302
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	12	53-2-306
	13	53-2-307
	14	53-2-322
	15	53-2-323
	16	53-3-301
	17	53-3-304
	18	Appropriation
	19	Effective date
652	1	76-21-101
	2	76-21-102
	3	76-21-103
	4	76-21-201
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	7	76-21-205
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	12	Appointment of initial director
	13	Severability

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653	1	60-11-111
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	3	Report to legislature
	4	Appropriation
	5	Effective date
654	1	67-1-301
	2	Effective date — termination date
655	1	13-35-226
656	1	2-16-405
	2	3-5-211
	3	13-37-106
	4	15-2-102
	5	Effective date
657	1	61-3-502
	2	61-3-506
658	1	Duties of department
	2	Legislative committee
659	1	61-8-101
	2	61-8-401
	3	61-8-402
	4	61-8-403
	5	61-8-404
660	1	50-1-202
	2	Effective date
661	1	19-9-503
	2	19-9-702
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	7	19-13-605
	8	Effective date
662	1	16-3-306
	2	16-3-309
663	1	Cost-of-living increase
	2	19-3-801
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664	1	2-15-231
	2	2-15-232
	3	Effective date
665	1	2-4-405
	2	2-4-405 (6)
666	1	17-7-111
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667	1	15-31-201
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	5	Repealer
	6	Effective and applicability dates
668	1	50-5-421
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	7	Effective date
669	1	13-27-501
	2	13-27-501 (4)
670	1	77-2-401
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	4	Codification
671	1	15-36-101
	2	Effective date — applicability
672	1	2-15-124
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	5	85-7-1505
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	7	Effective date
673	1	15-31-116
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	5	Severability
	6	Effective date — applicability dates
674	1	85-2-421
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	4	85-2-424
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	8	Codification
	9	Effective date
675	1	2-9-106
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	5	Codification
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	7	Applicability
	8	Effective date
	9	Termination date
676	1	13-1-106
677	1	17-6-301
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	9	17-6-312
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	11	17-6-314
	12	17-6-315
	13	17-6-321
	14	17-6-322
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	18	2-15-1807
	19	17-6-201
	20	17-6-211
	21	Temporary investment limit
	22	Severability
	23	Effective date
678	1	7-33-2125
679	1	90-1-101
680	1	87-2-301
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681	1	61-8-304
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	4	Repealer
	5	Severability
	6	Effective date
682	1	7-12-4323
	2	7-12-4305
	3	Effective date
683	1	15-24-1207
	2	15-23-111
	3	15-24-1203
	4	15-23-101
	5	Codification
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	7	Applicability
684	1	2-18-101
	2	2-18-102
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	4	Legislative intent — report
	5	Codification
685	1	Reestablishment
	2	2-8-103
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	5	Codification
	6	Effective date
686	1	17-5-1503
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	27	2-15-1805
	28	2-15-1806
	29	90-6-104
	30	Severability
	31	Effective date
	32	Coordination
687	1	Study on developmental disabilities services
	2	Study areas
	3	Effective date
688	1	22-2-306
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	4	Projects approved — appropriation
	5	Effective date
689	1	70-30-321
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	3	Saving clause
690	1	90-6-205
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691	1	Reestablishment
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692	1	Renal program rules repealed
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693	1	17-8-103 (2)
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694	1	87-1-506
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695	1	5-18-201 5-18-202 5-18-203
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696	1	76-4-105
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698	1	61-5-205
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699	1	20-9-141
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700	1	2-17-101
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	21	17-5-1521
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	34	Coordination
702	1	7-6-2320
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703	1	2-15-1815
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704	1	15-30-162
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705	1	Purpose and policy
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706	1	85-1-205
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707	1	15-1-501
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708	1	7-6-301
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709	1	39-7-301
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710	1	2-18-311
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